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Ottawa Royal commission inquiry into labour disputes
Hearings
III

v. 25

April, 1967.





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ROYAL COMMISSION
INQUIRY INTO LABOUR DISPUTES

563c

HEARINGS HELD AT

POR T ARTHUR

VOL. NO.

DATE

28

April 25, 1967

Official Reporters

NETHERCUT & YOUNG LIMITED
48 YORK STREET
TORONTO 1, ONTARIO
TELEPHONE 363-3111

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Toronto, Ontario

1 IN THE MATTER OF The Public
2 Inquiries Act, R.S.O. 1960,
3 Ch., 323

4 - and -

5 IN THE MATTER OF an Inquiry
6 Into Labour Disputes

7 BEFORE: The Honourable Ivan C. Rand,
8 Commissioner, at the Court
9 House, Port Arthur, Ontario,
10 on Tuesday, April 25th, 1967

11 E. Marshall Pollock Counsel to the Commission

12 -----
13 APPEARANCES:

14 15 G.B. Weiler, Q.C.) Private Individual

16 17 Norman E. Richard) Fort William-Port
18 General Secretary) Arthur and District
19 F. Mazur) Labour Council
20 Executive Officer)

1 Port Arthur, Ontario

2 April 25th, 1967

3 ---On commencing at 10:00 a.m.

4

5 MR. POLLOCK: The Hearings

6 open this morning with Mr. G.B. Weiler, Q.C.

7 I understand, Mr. Weiler, you

8 are appearing as an individual and not for

9 any organization?

10 MR. WEILER: That is correct,

11 sir.

12 MR. POLLOCK: I can tell you

13 that both the Commissioner and I have read

14 your brief but the manner of presentation is

15 up to yourself. If you want to go through

16 it, we have some questions we would like to

17 ask about matters raised in your brief and

18 perhaps you might go through it and we can

19 deal with the questions as they arise.

20 MR. WEILER: Sir, and Mr.

21 Commissioner, first of all, if I lapse from

22 time to time and address you by your former

23 judicial title, I want you to know that it

24 is partly out of reverence.

25 THE COMMISSIONER: There will

26 be no contempt.

27 MR. WEILER: No. I am very

28 happy to have the opportunity of presenting

29 some of my views gained from some practice

30 in this field of labour relations. I certainly

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1 am not in a position to offer any startling
2 solutions but there are certain positions that
3 I have taken and I have expressed them in
4 the brief and in the light of Mr. Pollock's
5 remarks, I won't then, read the whole brief.
6 Maybe I might offer some additional comments.

7 THE COMMISSIONER: Just take
8 your own course, because we want to hear
9 everything you have to say and it may be,
10 I think you get sometimes, different aspects of the
11 questions through your ears rather than through
12 your eyes.

13 MR. WEILER: The thing that has
14 bothered me is, in general, number one, the
15 need for remedies, prompt remedies to correct
16 injustices that are created through wrongful
17 use of force and the second thing that has
18 concerned me is this campaign that has been
19 carried on to remove what I feel has been some
20 safeguard, even if it has not been entirely
21 successful and even though there may be room
22 for substantial improvement, there must be
23 some ways and means of curbing the wrongful
24 activities of people who interfere with and
25 injure others.

26 Now, I feel that compulsory
27 arbitration in its present form is not a
28 complete solution. You do have a problem
29 of human nature and every now and then people,
30 at least union leaders tell me, that it is

1 futile to try to reason with a large group.
2 They say that at certain times, maybe once in
3 20 years, a union group feels that they have
4 to go on strike sort of, to get it off their
5 chest and get it out of their system. They
6 have to be hurt, maybe a little bit, in the
7 course of their efforts to inflict economic
8 harm on the employer. That, of course, is
9 a realistic solution but it is not an idealistic
10 solution.

11 THE COMMISSIONER: Do you
12 think it is wholly necessary? Take, for instance
13 - and I am speaking only on the basis of
14 hearsay - take the Dominion Foundry in Hamilton;
15 I am not familiar with all the details but I
16 happened to meet an employee of that company
17 over the time of several hours. We discussed
18 the conditions there and I was, I must say, a
19 bit astonished to find complete acceptance
20 on his part and, as he said, on the part of
21 the workers there, of the arrangements that
22 are in effect in that company. I don't know
23 whether they have any strikes or have had
24 them or not, I know nothing about that, but
25 I am dealing only with the statements. What
26 do you say of a situation of that sort where
27 you have a basis of reasonable satisfaction?

28 MR. WEILER: Sir, I believe
29 that an employer has an obligation to try
30 to make conditions such than an employee will

1 feel the utmost loyalty to him, will exert
2 his best effort. We are small employers in
3 our office but we have 20 or more stenographic
4 staff. I think if we have had any success
5 with our staff - and we are proud of them and
6 think they are about the best - I think it has
7 come through, number one, a recognition of
8 each and every one of them as individuals.
9 I want members of our profession, when they
10 come in, lawyers on our staff when they come
11 in the office in the morning, to say good-
12 morning to them, to say good-morning as they
13 are going through the office, to be courteous
14 at all times, to be understanding of some of
15 their problems when they need some special
16 help. I think that they should participate
17 to some extent in the success of the
18 enterprise and for a long time back I have
19 found that a profit-sharing principle was
20 substantially sound and I don't know why
21 unions, except for maybe selfish reasons,
22 have not found it desirable to follow that
23 principle. I am beginning to think that
24 maybe it is for the status of the union that
25 they are more concerned rather than maybe the
26 benefits to the employees.

27 I have discussed this with quite
28 a number of union leaders with whom I am on
29 a fairly friendly basis, even though I
30 represent management, and they don't give a

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1 satisfactory answer to it except that they
2 say that they want to always be able to show
3 their people what they are going to get. But
4 that does not bring out the best from the
5 employees and I think the Dominion Foundries
6 in one way or another, has implemented some
7 form of profit-sharing. We have a form of
8 profit-sharing in the sense that we try to
9 maintain - I am not talking to the public -
10 we should try to maintain basic salaries
11 equivalent to the average good salaries in
12 the business section of the city and then over
13 and above that there should be a participation
14 in the results of their efforts and much of
15 it is due to an extra 10 per cent or 15 per
16 cent diligence in output of work.

17 So I believe, therefore, that
18 it is, number one, a recognition of the employee
19 as an individual, as a person, not a number
20 and it irritates me when I hear people talking ----

21 THE COMMISSIONER: I don't
22 think anyone could challenge that. You have
23 respect and self-respect.

24 MR. POLLOCK: I think one of
25 the basic objections, I suppose, to any type
26 of profit-sharing plan, is the difficulty
27 in articulating the basis of what is the profit
28 to be shared and the fluctuation of auditors'
29 techniques and it lends itself to considerable
30 abuse if the employer so sees fit to abuse it.

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1 This, I suppose, is the objection that the unions
2 raise to it, is that they haven't got any
3 control over the prime base of what their share
4 of this profit is going to be based on. The
5 Dominion Foundry and Steel Company, of course,
6 are in a fortunate circumstance in that they
7 have across the street from them a very large
8 company of equivalent size, probably, engaged
9 in the same enterprise - Stelco, who are
10 organized with unions - and they, therefore,
11 have a gauge of acceptability. They can look
12 across and say "What are the employees under
13 the union circumstances getting and what are
14 they content with and we will reflect that
15 in our situation?" It is a very close
16 comparison, one against the other and as long
17 as they keep that level up, I don't know
18 whether it is purely altruistic or perhaps
19 an approach designed to keep the union out
20 of the plant, keep the employees happy -
21 whichever is the case it does, in fact, keep
22 the employees happy. As long as this thing
23 is not abused, it works. The problem that
24 is faced by a considerable number of unions
25 is that many employers are not that beneficial
26 or as beneficial as yourself, or have the
27 same interest as yourself.

28 MR. WEILER: They are
29 suspicious of the accuracy of the profits
30 but they seem to forget that there is a watch dog

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1 by the name of The Department of National Revenue,
2 which is pretty effective in determining the
3 quantum of profits of a company.

4 MR. POLLOCK: Well, with the
5 exception that some of the profits are not
6 distributable profits and they can be allocated
7 into expansion of plant, they can be attributed
8 to capital appreciation so that there may be
9 a very little amount of money that is dividendable,
10 if we can use that term, ~~which~~ would probably
11 be the same measure as would be for the profit-
12 sharing. As far as the shareholders are
13 concerned, the expenses of capital, the
14 appreciation in capital accrues to their
15 benefit. As far as the employees are concerned,
16 unless it is paid out to them, this does not
17 accrue to them at all.

18 MR. WEILER: I realize that
19 there is the area but these are the mechanics
20 of carrying out a principle.

21 THE COMMISSIONER: There is no
22 doubt that it has been tried in many cases
23 in the United States successfully. It strikes
24 me that it all depends upon the attitude
25 primarily of the employer. What is his
26 attitude towards the function that he is
27 performing for society? If he looks upon
28 it as a social function, and that is what it
29 is irrevocably resolving itself into today,
30 on which the whole structure of society is built,

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every change he makes, every fundamental
change in construction, in the elaboration of
a city, for instance, and the establishment
of zones for this, that and the other things in
which he takes part and gives leadership,
everything he does of that nature adds to
the involvement of his industry with the
community.

MR. WEILER: That is true.

10 THE COMMISSIONER: And he
11 looks upon himself as a trustee of community
12 interest with the return as it is today, of
13 profit, whatever he may make depending upon
14 his skill, his insight, his imagination, his
15 inventiveness and his initiative. All of
16 that goes to him as a return to him, but
17 fundamentally he is working out a social
18 function for which he must have the cooperation
19 of workers. It seems to me that that attitude
20 has to become established before there will be
21 satisfaction on both sides.

22 MR. WEILER: And in this modern
23 day, where so much of the industrial and
24 commercial life is in the hands of professional
25 managers, in behind the social problem is a
26 moral problem because, after all, it is the
27 moral attitude that guides, in effect, the
28 social principles.

29 THE COMMISSIONER: I must say
30 it strikes me that we are pretty well erasing

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1 from many of our own material relations, any
2 material sense of morality. That seems to have
3 gone by the board, almost.

4 MR. WEILER: Unfortunately it
5 is lacking, I agree sir. But idealistically,
6 it is a moral problem.

7 THE COMMISSIONER: It is pretty
8 hard sometimes to separate an economic, political
9 a social, a moral problem. They are all
10 interwoven today.

11 MR. WEILER: But behind it all
12 it seems to me that there is the human
13 intelligence with the overriding ---

14 THE COMMISSIONER: I would accept
15 that, but all I say is that I don't think it
16 is effective today.

17 MR. WEILER: I agree, but that
18 is the direction, I think in which you have
19 to move and I am not trying to and I would not
20 want anyone to sneer at me as being a moralist
21 because that is a technique that is sometimes
22 used.

23 THE COMMISSIONER: It is a
24 term of degradation.

25 MR. WEILER: It may take
26 centuries of education.

27 THE COMMISSIONER: And that
28 will, in turn, depend upon the principle of
29 education that is followed.

30 MR. WEILER: Dealing with some

more specific things I do feel that with all its frailty our Ontario conciliation procedure is still a procedure that is very helpful and very effective. I am a little bit concerned even about the trend of the Department of Labour towards eliminating conciliation boards, because so frequently it is in conciliation boards that you get outsiders who will bring maybe a community view in recommendations and they will outline that view in the reasons for their recommendations. I am not happy about some boards which, when they are not successful in bringing the parties to an agreement, just report "No success". I feel that a thinking chairman at least of a conciliation board should be guided by some principles and should express those principles in support of the recommendations that he may make.

I say that, unfortunately, there is not available to conciliation boards the statistical information, many facets of information that maybe a board should have in dealing with problems, some idea of the community situation. The boards listen only to the two parties. It seems to me that maybe conciliation board chairmen and arbitration board chairmen should have access to more information, more evidence and the technique of presentation maybe should be

1 changed. Maybe sometimes it can be tested by
2 cross-examination, even if the questions are
3 put through the chairman.

10 MR. WEILER: I am not going
you,
11 to labour / Mr. Commissioner, really with the
12 brief and I am going to make some comments
13 as I go through it and just leave it at that.

14 THE COMMISSIONER: I think,
15 though, that what we have been discussing
16 really underlies the whole relation of labour
17 and management.

18 MR. WEILER: That is right.

19 MR. POLLOCK: Again on the
20 matter of procedure, you have divided your
21 brief very well, I think, into different
22 topics, the first being the general commentary
23 and then going through the picketing at
24 different stages and some other recommendations
25 afterwards in relation to injunctions and the
26 Labour Relations Board.

27 MR. WEILER: I am going to go
28 through and make some comments.

29 MR. POLLOCK: Fine. I have
30 a couple of comments arising out of your general

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1 comments so, if I have an idea when you are
2 going to leave that area of discussion, I can
3 ask my questions.

4 MR. WEILER: Again, dealing
5 with conciliation officers and conciliation
6 boards, I would hope that the Department of
7 Labour would follow a policy of making it
8 attractive for experienced and successful
9 conciliation officers and mediators and chairmen
10 of boards to remain in the service of the
11 Department. Recently there has been a man
12 returned to the Department for whom I had very
13 high regard years ago and, again he has shown -
14 although he was out in the business world for
15 a number of years - he has gone back to the
16 Department and he is showing again, how
17 valuable is experience because it is a technique
18 that you don't learn in the books; it takes
19 years.

20 THE COMMISSIONER: There is
21 no doubt about that.

22 MR. WEILER: These people are
23 the ones whom the Department should rely upon
24 and they should have more of them.

25 In general, on the question of
26 arbitration, including compulsory arbitration
27 during the term of the agreement, the methods,
28 in my opinion, the methods of presentation
29 should be improved and I am going to say that
30 I have a view that the arbitrator should strive

1 to apply the law of the land and that he
2 should leave any substantive changes in the
3 law, maybe to the legislators. That is the
in
4 only way/which, in my opinion, you can get
5 any reasonable degree of uniformity. It is
6 true that is a traditional view that maybe
7 we took out of law school, but I am a little
8 concerned about some trend among arbitrators
9 to embark on establishing a whole new body of
10 jurisprudence, with views on the law which are
11 not consistent with the decisions laid down
12 by the judiciary... So, I think that they
13 should not try to set up a distinct body of
14 principles or, in other words, a new jurisprudence.
15 I think that they should try, as far as
16 possible, to administer the law as it is
17 commonly known and by which people outside of
18 union-management relations are bound. There
19 should not be one principle, one law, relating
20 to a person who is under a collective agreement
21 and another principle relating to a person
22 working in another part of the same organization
23 who is not under collective agreement.

24 THE COMMISSIONER: All I can
25 say there is that I am a bit leary, if I may
26 use that word, about generalities of this sort.
27 I like to have a concrete instance in each
28 case, what is meant and what is your example
29 of this departing from a legal rule. We are
30 really in a new context in some respects.

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1 MR. WEILER: My Lord, one
2 expression that was used in an arbitration
3 award recently, and it was the Port Arthur
4 Ship Building Company, the expression was
5 used that the arbitrators were cutting the
6 umbilical cord. In effect, in my interpretation
7 of the decision, they were embarking on a
8 different set of principles.

9 THE COMMISSIONER: I think
10 there are really metaphors in the history
11 that sometimes cause a great deal of harm.

12 MR. POLLOCK: Different
13 principles from the ordinary, traditional
14 master and servant principle?

15 MR. WEILER: That is right.

16 MR. POLLOCK: What you are
17 saying, really, is that you are not in support
18 of the thesis of the now Mr. Justice Laskin
19 in the Peterborough Lock Company, the common
20 law of collective bargaining that once you
21 are in a collective agreement situation, there
22 is a new area of concern, that principles are
23 different than in the ordinary master and
24 servant relationship where there are no
25 collective agreements contemplated.

26 MR. WEILER: I think that should
27 be the province of the legislature to set it
28 on and properly, maybe there should be these
29 other principles but I don't think it should
30 be in the hands of individual arbitrators to

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outline and establish those principles. That
is my point. I am not saying there should
not be those principles because there are some
new concepts that I am in agreement with.
There would be, I think, good developments
of the law but it seems to me that from a
long-range point of view, we can't do it on
this ad hoc basis.

THE COMMISSIONER: Yes, I
would say that. As students of common law,
we are dealing with the concrete instance
that goes from instance to instance. The
generalizations may be expressed but I think
they must bear the test of the individual
justification.

MR. WEILER: Commenting on
page 6 of the brief, and the illustration,
I am concerned about the attitude of some
unions to deliberately plan an organizational
picketing campaign and the evidence that
sometimes these are deliberately planned and
they are not spontaneous stoppages of work
on the part of the employees, is illustrated
by one union at least, having readily available
a form of recognitional agreement. I would
like to read some of the language which
indicates that it was not drawn by some
working employee, nor by a local business
agent.

MR. POLLOCK: This is in the

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construction industry, is it?

MR. WEILER: Well, it was not confined to construction. In this illustration that I refer to, the company was engaged in several facets of work. One of them happened to be a sub-contract in connection with a development program but there were other industrial types of work being carried on by the same company.

MR. POLLOCK: The point I make is the most common site of organizational picketing is the construction industry.

MR. WEILER: That is right and it is in connection with the construction aspect of the company's operations that the organizational picketing took place.

The preamble read:

"Whereas the employees of the company have unanimously joined the union and accepted the union as their bargaining agent and, whereas, the company has agreed with the employees to acknowledge the union as a bargaining agent and, whereas, the union has acknowledged that they are prepared to act as the bargaining agent for the employees of the company.

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Now, this indenture witnesseth
that in consideration of the
execution of this agreement,
the parties hereto agree as
follows:

1. The employer shall forthwith recognize the union as the sole and exclusive bargaining agent on behalf of all of its employees save and except foremen and those above the rank of foreman, office and technical employees.
2. The company agrees to negotiate with the union in accordance with the provisions of the Ontario Labour Relations Act and acknowledge that all steps have been properly taken by the employees and the bargaining agent up to and including the operation of section 11 of the said Act.
3. The company agrees to return each employee to his respective job held prior to the (blank) date and further agrees not to threaten, dismiss, intimidate any employee because of his participation in the incident

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1 of (blank) date.

2 4. The bargaining committee of
3 the union agree to recommend
4 unanimously, ratification of
5 this settlement to the
6 members."

7 Now, that smacks to me, of a
8 planned, deliberate program and I am skeptical
9 of some of these spontaneous stoppages.

10 MR. POLLOCK: It seems to
11 contemplate in the agreement that there has
12 been a stoppage occur. Are any of these
13 agreements signed by a simple presentation to
14 the company while the people are still working,
15 that they now have the majority saying "You
16 now have the majority support of the men on
17 this project. Would you sign this?". Are
18 they ever signed on this basis?

19 MR. WEILER: Only when the
20 stoppage was underway and during the course
21 of the stoppage.

22 MR. POLLOCK: Is there any
23 proof offered to the company of the first
24 recital, as to whether or not they had union
25 support - I am sorry, membership support?

26 MR. WEILER: There was some
27 evidence indicating majority of a segment -
28 not unanimous support.

29 MR. POLLOCK: Of course, you
30 don't need unanimous for certification.

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1 MR. WEILER: That is right, but
2 the simple facts are that it short-circuited
3 the entire procedure.

4 THE COMMISSIONER: Well, they
5 still remained outside of the Act so far as
6 certification went?

7 MR. WEILER: Well, the
8 recognition gives them virtually ---

9 THE COMMISSIONER: But they
10 have to follow the provisions of conciliation
11 with that recognition, but they didn't attempt
12 to use that as the basis for certification
13 alone.

14 MR. WEILER: Oh, no, they don't
15 need it for certification.

16 THE COMMISSIONER: To that extent
17 they are outside the Act?

18 MR. WEILER: Oh, yes.

19 THE COMMISSIONER: Had they gone
20 into a strike?

21 MR. WEILER: Yes.

22 THE COMMISSIONER: Then that
23 was an illegal strike.

24 MR. WEILER: No question about
25 it and, as I say, the illustration is there
26 on page 6.

27 MR. POLLOCK: Of course, any
28 strike that takes place prior to being in a
29 position to ask for conciliation is illegal
30 under 54 (2).

1 MR. WEILER: Or until conciliation
2 procedures are completed.

3 MR. POLLOCK: And you are either
4 certified or you don't have an agreement in
5 existence so that conciliation procedure will
6 be available to you and certain activity of
7 that nature is, by virtue of the Labour
8 Relations Act, unlawful.

9 MR. WEILER: That is right.

10 MR. POLLOCK: What do you
11 think about that?

12 MR. WEILER: Well, I think that
13 if we are going to try and stay out of the
14 jungle, we should follow the rules.

15 MR. POLLOCK: Well, it prohibits
16 a bona fide attempt of a group of people in a
17 unit from getting together without any procedure,
18 without getting a union, without doing these
19 things, to concertedly withdraw their labour
20 and say "We are not going to work under these
21 conditions unless you do something for us",
22 and what the Labour Relations Act is saying
23 is "You can't do this unless you (a) form
24 yourselves into a union, an acceptable union,
25 and (b) go to the Labour Relations Board and
26 get certified and (c) serve notice to go through
27 all the conciliation procedure".

28 MR. WEILER: Well, again, the
29 idea of the collective action, I think is just
30 as objectionable as some of the tactics that

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were used by employers a half a century ago to prevent any organizational work of a proper bargaining agent.

4 THE COMMISSIONER: It doesn't
5 require that they enter into a union. It simply
6 says that if they strike together, it is illegal.

7 MR. WEILER: If acting in
8 concert, that is right.

THE COMMISSIONER: It is no requirement of a union but it is the mass action that is prohibited without conciliation.

12 MR. WEILER: That is right.

13 THE COMMISSIONER: We were
14 just considering the effect of 54.

15 MR. WEILER: That is right,
16 section 54 (2) - I guess the whole of section
17 54 contemplates a union-employer relationship
18 as contrasted with efforts by a small group
19 or by a group of employees who have not formed
20 themselves into a form of trade union.

21 MR. POLLOCK: The application
22 of section 54 (2) depends on section 13, which
23 is the power to appoint a conciliation officer
24 which contemplates the circumstances that you can
25 have a recognition situation, voluntary
26 recognition of a union and an agreement that
27 has already been in force and then terminated
28 so it is a section 40 notice question and the
29 third case of the first certification type of
30 situation under section 11.

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1 THE COMMISSIONER: That would
2 mean this, that if they don't form a union and
3 there is no recognition, they can strike
4 without any illegality.

5 MR. WEILER: An individual
6 employee may withdraw his services but he
7 may not act in concert with others. The
8 thing that strikes me is that I can't understand
9 why, in the situation that I described, an
10 attempt is not first made to request
11 recognition before the group action is taken
12 by an unlawful strike. That is the thing
13 that bothers me and there must be a remedy
14 because so many other people are hurt including
15 people who would not come within a bargaining
16 unit. The general public think only of people
17 in the bargaining unit but they are only part
18 of the people who are affected and there
19 are a great many other employees adversely
20 affected, even though they might not lose
21 their jobs immediately. Their opportunity
22 of bettering themselves by increased earnings,
23 and so on, of the company are going to obviously
24 be affected if the company cannot make the
25 earnings sufficient to cover all of them.
26 All I say is that there must be some adherence
27 to the principles. I should not be labouring
28 this, but in this part of the country I think
29 that a lot of us feel that there should be a
30 little more emphasis by maybe even news media

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1 on that theme.

2 I just have one or two other
3 comments that I wanted to make and they relate
4 to comments on pages 21 and 22. It seems to
5 me that there should be an investigative and
6 enforcement arm of the Department of Labour,
7 probably more preferable, the Department of
8 Labour than the Ontario Labour Relations Board
9 because it might derogate from the so-called
10 neutrality of the board if it has an arm for
11 investigation and enforcement. So, I think
12 maybe the Department of Labour should have
13 that arm. My feeling is that so many times
14 the Department of Labour is only concerned
15 about smoothing things over at any price,
16 covering thing up so to speak. I don't mind
17 saying that that attitude on the part of some
18 of the conciliation officers, I think, is wrong.

19 MR. POLLOCK: They take that
20 pattern, I suppose, from the employers and the
21 unions.

22 MR. WEILER: They leave it to
23 the private parties to fight it out and the
24 public be damned. That is about the size
25 of it.

26 MR. POLLOCK: On your first
27 point, of course, the function of enforcement
28 in the United States is an arm of the National
29 Labour Relations Board. It is a separate
30 function but that is a mechanical thing.

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1 MR. WEILER: No one can tell me
2 how it works. Does it have the effect of
3 reducing the neutral position of the Board?

4 MR. POLLOCK: No, I don't think
5 so, I think it functions as an independent
6 arm of the National Labour Relations Board. It
7 doesn't take any instructions from the National
8 Labour Relations Board. It may have, I don't
9 know.

10 MR. WEILER: There is no doubt
11 about it that some people who are better qualified
12 to do that type of investigative work should
13 be available and my view is that it should not
14 be left to employers or to employees to do it
15 on their own. Under the statute there are a
16 growing number of sections which give the
17 employee the opportunity of calling on officers
18 of the Board to assist them and to carry out
19 the investigative and enforcement work. I
20 think that a similar provision should be made
21 for the non-union groups.

22 I feel that when employers have
23 to shoulder the burden of seeking leave to
24 prosecute and of conducting prosecutions, it
25 has a very definite detrimental effect, not
26 only with the employees who may have been sheep
27 and misled into some wrongful action, but to
28 a lot of other employees who hate to see one
29 of their brethren sacrificed and maybe they
30 feel they may be discriminated against by being

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1 picked out as an example. So I don't think
2 an employer should be put in that position
3 of having to be exposed to a charge that he
4 has been vindictive, for example, because it
5 has the effect of deteriorating the relations
6 between him and the loyal employee.

7 THE COMMISSIONER: What do you
8 think of such a case as arose in Gaspe? You
9 are familiar, I suppose, with that?

10 MR. WEILER: That is the one
11 where there was a civil action which flowed from it.
12 That, of course, is a matter, My Lord, for the
13 company vis-a-vis the union.

14 THE COMMISSIONER: Yes, that is
15 true, but even the union comprises the working
16 group under that employer.

17 MR. WEILER: I must confess
18 that I think of the union ----

19 THE COMMISSIONER: As separate
20 from the people?

21 MR. WEILER: There are so many
22 illustrations of how that occurs that the
23 union is an entity separate and distinct from
24 the employees that it purports to represent.

25 THE COMMISSIONER: What do you
26 say about proceeding against a union in
27 relation to a connection that you must establish
28 between the union and the Act?

29 MR. WEILER: I don't think that
30 either the employer or the union should be

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1 prohibited or precluded from taking private
2 steps against each other by way of suit for
3 damages or otherwise. All I am saying is
4 that the breaches for which there are penalties
5 provided, should be investigated and enforced
6 by an arm of either the Department of Labour
7 or of the Board. Now, I know this, that there
8 have been flagrant breaches of the statute
9 and causing great harm to a great number of
10 people and the immunity for the wrong doers
11 has been the price of a settlement.

12 THE COMMISSIONER: Yes, there is
13 no doubt of that.

14 MR. WEILER: And that does
15 not sit right with me.

16 THE COMMISSIONER: Well, what
17 would you suggest?

18 MR. WEILER: Again I say that
19 if there is a wrong doing, in the enforcement
20 of any statute it should be done by people
21 who are competent to do it. Now, the ordinary
22 police and Crown officials, under our present
23 set-up, are not disposed, some of them are not
24 competent to investigate ---

25 THE COMMISSIONER: Take the case
26 now, you have a thousand employees and 200 of
27 them engage in a wildcat strike that paralyses
28 the work. What do you conceive the remedy to be?

29 MR. WEILER: Well, there are
30 penalty provisions ----

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1 THE COMMISSIONER: But if you
2 wanted to take proceedings against the union,
3 what do you think you would have to show?

4 MR. POLLOCK: What is the basis
5 of the liability that the union has for the
6 acts of these employees?

7 MR. WEILER: Now, you are talking
8 about civil liability.

9 THE COMMISSIONER: Would you
10 have to show a connection between the union
11 by an officer or some group to the act or would
12 you charge the union in the first instance
13 with liability regardless of its participation
14 and allow it to recoup itself in any way it
15 pleases from the men who are involved?

16 MR. WEILER: I will deal with
17 that aspect in a moment. What I was touching
18 on was not that type of thing but breaches of
19 the statute which are independent of any monetary
20 loss for which recovery might be sought. I
21 think that as we have officers, people who are
22 specially equipped to enforce our traffic laws
23 and are particularly astute at it, there
24 similarly should be people who are competent
25 for investigation and for enforcement of
26 penalties against individuals.

27 THE COMMISSIONER: What you
28 really are suggesting is the converse of an
29 ombudsman: You want an independent officer
30 as prosecutor.

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1 MR. WEILER: In a sense, yes.

2 Not unlike Mr. Pollock referred to, the
3 enforcement branch of the National Labour
4 Relations Board.

5 MR. POLLOCK: Let us take
6 your position. You are confined to, for
7 example, talking now - at least the first
8 position you are taking with the offences
9 under the Labour Relations Act, the unlawful
10 strike, the unfair labour practices.

11 MR. WEILER: Or offences under
12 the code.

13 MR. POLLOCK: Well, let us
14 leave the code for the moment. If, for
15 example, you leave the burden of establishing
16 that there has been an unlawful strike with
17 the employer for the purposes of starting this
18 machinery going because in many cases the employer
19 doesn't want somebody else coming in right away,
20 it may be a very minor unlawful strike, there
21 may be other reasons why he doesn't want to bring
22 in this great machinery, but assuming that the
23 employer takes the initial steps and gets a
24 declaration from the Board that there is an
25 unlawful strike, at that stage there ought to
26 be, as I understand your submission, somebody
27 from the Department of Labour who would say
28 "All right, we have got a declaration it is
29 an unlawful strike. We are going to proceed
30 in the Magistrate's Court to commit these

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1 people on the basis of that declaration".

2 MR. WEILER: Independently
3 of any future negotiations between the union
4 and the company?

5 MR. POLLOCK: That is right.
6 That is your view.

7 MR. WEILER: That is my view.
8 MR. POLLOCK: Turning to the
9 other question, ----

10 MR. WEILER: There are some
11 other reasons for that, if I might just add
12 to that. Not only is it a matter of relations
13 between the employer and the employees, not
14 only is it a matter of the union officer sometimes
15 using the principle of immunity at the expense
16 of an adequate settlement for the employees
17 but then there is the other problem of the
18 straight expense that individual employers
19 are exposed to in conducting private prosecutions
20 and of course the fines go to the provincial
21 treasury.

22 MR. POLLOCK: Well, of course,
23 in those circumstances, the enforcement
24 provisions, the union is liable, under the
25 Labour Relations Act.

26 MR. WEILER: Yes, but the
27 penalties that are imposed by the Magistrate
28 don't go to the person who suffered.

29 MR. POLLOCK: No.

30 MR. WEILER: And yet that person

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1 assumes the whole burden of that part of the
2 administration of justice.

3 MR. POLLOCK: That brings us to
4 the next step, as to the civil liability of
5 the union for these damages and if you want
6 to collect damages as opposed to some kind of
7 fine that is justified on the basis of protecting
8 the legislation, protecting the integrity of
9 the Labour Relations Act, fines can be paid
10 into consolidated revenue, but now you are
11 talking about recoupment by the company for
12 these unlawful acts, the consequences of these
13 unlawful acts which, of course, would have to
14 be civil liability.

15 MR. WEILER: Well, I haven't
16 touched on that in my brief and I know the
17 Commissioner has raised the question. I don't
18 think that there is any doubt, there is no doubt
19 in my mind that if responsible officers of the
20 union, either counsel or procure, or if they
21 condone or are apathetic and take no action, no
22 genuine action - and I say "genuine" - then I
23 think that there should be some vicarious
24 liability. Maybe the principles that apply
25 in the tort sphere almost are applicable here
26 because if an employee goes out on a frolic
27 of his own, in the accepted case of statutory
28 liability, the employer is not liable.

29 MR. POLLOCK: The basis of
30 liability enunciated in those arbitration cases

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1 which have proceeded against the union for
2 the collection of some kind of monetary damages,
3 Polymer, for example, that is the type of
4 thing you are referring to?

5 MR. WEILER: That is right.

6 MR. POLLOCK: The union has
7 to do something to show it is not condoning
8 this thing and positively withdraw its
9 support on the part of recalcitrant members.

10 MR. WEILER: I have, in a number
11 of collective agreements, succeeded in including
12 provisions in the no-strike clause, setting
13 out a positive obligation on the part of the
14 union and its officers to do certain things
15 in the event of a wrongful stoppage and I was
16 doing this before Polymer because I felt if
17 there are rights they have to assume some
18 responsibility and they just can't sit back
19 and twiddle their thumbs and go through the
20 motions. I know of a situation where it was
21 alleged that, by radio there were signals,
22 that if a certain message was given to go back
23 to work, then it meant the opposite.

24 THE COMMISSIONER: That is the
25 difficulty that may arise in any situation.

26 MR. WEILER: That is one of
27 the problems but, again, in the enforcement
28 of the Act, the Unfair Labour Practices, the
29 investigative arm of the Department will be
30 much more successful in eliciting the information

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1 and finding out just what really went on because
2 they will be able to get it from people who
3 know, whereas an employer cannot get that
4 information.

5 MR. POLLOCK: Of course, if
6 they are going to be the people prosecuting,
7 I doubt very much whether they would be able
8 to get this information.

9 MR. WEILER: But they will
10 get it from one or two witnesses. There might
11 be one or two ring leaders out of 100 employees
12 and there may be 40 employees who are not
13 sympathetic to the whole thing at all, and
14 they are irritated at the wrongful acts of
15 some of these leaders, but they are not
16 prepared, maybe they are afraid and I can
17 understand why they would be afraid, to
18 volunteer the information to an employer, but
19 they will, under questioning, disclose it, I
20 think, to an investigation officer who can
21 use his judgment as to whether that witness
22 should be called or as to whether it would be
23 a lead to witnesses who might be subpoenaed
24 to give the evidence.

25 As you see from the last part
26 of my submission, although I am subjected in
27 my own household to some other views sometimes,
28 I like to rely on the judicial system and I
29 do not like a proliferation of administrative
30 boards. I think, from a long-range point of view,

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1 we will have greater security through seeking
2 remedies and administering the law through the
3 proper judicial system.

4 THE COMMISSIONER: We have
5 been forced to proliferate administrative
6 boards.

7 MR. WEILER: That is true.
8 Maybe we, as lawyers, and lawyer legislators,
9 have not pressed adequately for changes in the
10 law, but some of these arguments that are
11 offered, you know, in connection with hearings
12 on injunctions that short shrift is given,
13 that is a matter of mechanics. There is no
14 reason in the world why there shouldn't be a
15 competent judge who will hear it and hear it
16 fully and have time to hear it.

17 THE COMMISSIONER: That is
18 rather interesting, it has a certain relevance
19 but in Australia, under the constitution, the
20 deposit of judicial power is so expressed as
21 to exclude the jurisdiction of any administrative
22 authority. A court which, in the strict sense,
23 administers judicial power, cannot have
24 associated with it, administrative power,
25 and that was held by the judicial committee
26 and as a result of that, of which a contrary
27 view had been taken for 30 or 40 years, they
28 had to reorganize their whole labour administration.

29 MR. WEILER: Into what form,
30 may I ask?

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1 THE COMMISSIONER: Well, to
2 separate the administrative from the judicial,
3 and they provided that one member, say, of
4 the arbitrable board could exercise the power
5 of a judge of the Supreme Court by express
6 appointment to both.

7 MR. WEILER: Oh, I see.

8 MR. POLLOCK: They had to split
9 that function between two of them.

10 MR. WEILER: As you see from
11 my summary, I feel that remedies ought to be
12 available. I think that in Ontario, which
13 is a very large province, (and you are sitting
14 here a thousand miles from Toronto and it is
15 not easy to get relief from an administrative
16 board sitting in Toronto, even if there were
17 power to issue cease and desist orders,) I
18 think that with judges sitting in each county
19 and, bearing in mind that we have companies
20 under both federal and provincial jurisdiction and
21 they are competent to deal with both of them,
22 that better use should be made of our set-up
23 and we should not, as I say, set up a whole
24 new apparatus, one to administer the provincial
25 Act and one for administering the federal Act
26 in order to provide adequate remedy.

27 THE COMMISSIONER: We are going
28 backwards, in the opposite direction, by
29 forbidding judges to accept these arbitration
30 boards.

1 MR. WEILER: My Lord, I am only
2 back a week. I understand there have been
3 two changes since the middle of March.

4 THE COMMISSIONER: I am not sure
5 if it has yet been put into legislation, but
6 that is the policy of the government.

7 MR. POLLOCK: I think what you
8 are talking about now is the enforcement by
9 injunctive proceedings which has always been
10 with the court, not the arbitration function.

11 MR. WEILER: Oh, no, I am thinking
12 of the injunction proceedings.

13 MR. POLLOCK: It still remains
14 with the courts.

15 MR. WEILER: That is right.

16 THE COMMISSIONER: Of course,
17 you are not terrified by the name "injunction"
18 because it was originally used in a court of
19 equity and the effect of an injunction, I
20 can't see why it can't be vested in an
21 administrative tribunal.

22 MR. WEILER: All I am concerned
23 with is why there should be set up a whole new
24 apparatus in each individual county again,
25 where it may only be used on rare occasions.
26 We don't have very many in the north, here.
27 I think that in 20 years, I don't think there
28 have been more than some 20 applications - I
29 think roughly 20 applications. I would be
30 interested to know what Professor Krever's count

1 shows.

2 May I just digress for a moment
3 and make a comment on the first report of
4 Professor Krever, which I did not read in total ---

5 MR. POLLOCK: You are referring
6 now to the report on the study of labour
7 injunctions by editor Dean Carrothers, in which
8 Professor Krever writes some appreciation of
9 the injunction procedure?

10 MR. WEILER: That is right. He
11 comments in there, sir, on the fact that ex
12 parte orders are obtained and, even though they
13 are continued, the actions are not continued
14 through to trial and he seems to draw the
15 conclusion from that that it was bad in the
16 first instance to have issued the order. There
17 has been editorial comment which seems to follow
18 that line of thought. Now, all I say is that
19 that is rubbish, as you well know. Just because
20 you start an action, that doesn't necessarily
21 mean that you weren't entitled to the remedy
22 if the situation is cleared, without going
23 through the whole trial. It is not good
24 practice, first of all, to maybe clutter up
25 the courts unnecessarily in order to get what
26 might be, in effect, a declaratory judgment or
27 a continuing order and, secondly, to get an
28 assessment of damages at a great cost to
29 everybody.

30 THE COMMISSIONER: Wouldn't that

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1 strengthen the view that that could be given by
2 an administrative tribunal in which there was
3 no question of pursuing an action to its conclusion?

4 MR. WEILER: Well, it is true,
5 sir, that you can have another body or bodies to
6 administer and to enforce the law and to provide
7 remedies.

8 THE COMMISSIONER: You could have
9 a labour judicial body as well as a labour
10 administrative body each applying labour law.
11 There is quite a bit in names; it is sometimes
12 called an industrial court in which you would
13 have a power there of action that might be
14 quite different from the ordinary common law
15 procedure and the basis of action.

16 MR. WEILER: And it might be,
17 sir, that in the individual counties, the local
18 judge might be invested with that power. I
19 am concerned about this, and we are a thousand
20 miles away from Toronto, it is difficult to
21 get action because the problem of adducing
22 the evidence, of transporting it and so on,
23 is a real obstacle.

24 MR. POLLOCK: Unless you put
25 your witnesses on the plane and send them there.

26 MR. WEILER: First of all, you
27 have the cost factor, secondly you have the
28 problem of initiating the action and having
29 notice given and all the rest of it and then
30 sometimes the planes don't fly and they don't fly

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1 from Atikokan and they don't fly from Fort Francis
2 and they don't fly from a lot of other places
3 and the expense involved of moving people to
4 Toronto, for example, to get a declaration of
5 an unlawful strike is sometimes exorbitant,
6 as I well know. The damage that continues
7 in the meantime is excessive and to a lot of
8 innocent people. The damage is not just
9 being suffered by the employees in the bargaining
10 unit, but by a lot of other employees.

11 THE COMMISSIONER: How would it
12 be to have a commissioner with authority to
13 issue a temporary order of that sort, who can
14 travel to you, rather than you to him?

15 MR. WEILER: Again there is
16 a problem of how do you get him? You have to
17 initiate it by some kind of an application.

18 THE COMMISSIONER: You phone
19 for his presence. They do that, in some
20 respects, in Australia. The commissioner
21 goes right to the scene of the disagreement,
22 or whatever it may be, he has certain authority
23 which can be exercised anywhere.

24 MR. WEILER: Well, I contemplated
25 that maybe we might have through this branch
26 of the Department, an official who might ---

27 THE COMMISSIONER: You are
28 talking there of a political department?

29 MR. WEILER: That is what I am
30 concerned about.

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1 THE COMMISSIONER: Don't you
2 think it would be better to have it non-political,
3 to be independent?

4 MR. WEILER: Very definitely,
5 that is why I want the judiciary.

6 THE COMMISSIONER: You can have
7 an independent officer. Take the ombudsman,
8 he is an independent, public officer. He is
9 accountable to nobody, really, except ultimately
10 in his appointment to the government or the
11 legislature, so theoretically, a policeman is
12 in that position too: He is a public officer.
13 He is not a servant of the city, except probably,
14 if he is a traffic officer, but in his enforcement
15 of the law, he is really a public officer for
16 whose action no appointing body is responsible.
17 That was held years ago and it seems to me that
18 if you have a public prosecutor, he has got
19 to be absolutely independent and not subject
20 to the control of any political influence
21 because men in politics are just like the men
22 in business: They don't want to be involved.
23 Each one of them has to live with the people
24 who are being proceeded against.

25 MR. WEILER: That is correct, you
26 have put your finger on it and have expressed
27 it in much better words than I have been capable
28 of expressing it, the idea that someone outside
29 of the immediate parties can come in and
30 keep the peace, putting it simply. All I am

1 concerned about is that in a large province
2 like this, and in view of the relative rarity
3 of these situations, there may be an inclination
4 to have the person sitting only in Toronto
5 or Ottawa, as the case may be, because you
6 would have to have both. I would assume so,
7 in view of the two jurisdictions, and to get
8 him to the trouble spot in short order, might
9 take two or three days.

10 THE COMMISSIONER: Oh, well,
11 under normal conditions it shouldn't take more
12 than two or three hours.

13 MR. WEILER: Well, in Toronto,
14 in the Golden Horseshoe, you can do that, but if
15 it occurs at Manitouage ---

16 THE COMMISSIONER: If it has
17 to go to a court it is going to take longer.
18 You have to prepare the affidavit, you have
19 to have somebody - if you are going to speak
20 through somebody who knows the facts, he has
21 got to be transported from one place to another
22 or the affidavit has to be.

23 MR. WEILER: In the ordinary
24 course, if a problem develops at 2:00 o'clock
25 in the afternoon, the material can be assembled
26 and before 5:00 it can be presented ---

27 MR. POLLOCK: Can it, if the
28 fellows are up in Atikokan?

29 MR. WEILER: Yes, because the
30 information is phoned, the papers are prepared

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1 and they drive and they are here the same
2 afternoon.

3 THE COMMISSIONER: You are
4 assuming you can go to a judicial officer right
5 near you.

6 MR. WEILER: That is right,
7 that is why I want the availability.

8 THE COMMISSIONER: Well, it
9 might be continued. It would have to be
10 continued in a very limited way and you
11 certainly can't use the judges now for
12 arbitrators.

13 MR. WEILER: I am not thinking
14 of it as an arbitrator.

15 THE COMMISSIONER: You are
16 thinking of the injunction only?

17 MR. WEILER: Yes, that type of
18 remedy. I am speaking against this great
19 campaign to get rid of all injunctive proceedings.
20 I am not in favour of it, it is wrong. We have
21 got to have some quick means.

22 THE COMMISSIONER: That may be
23 accepted but the question is should you impose
24 that on a court of justice? Now there is a
25 great deal against it. In the first place
26 there is a delusion on the part of labour
27 that these men are prejudiced except where they
28 want benefits from the judicial body, but all
29 of this noise and denunciation is from people
30 who are ignorant of these facts underlying

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1 judicial action. On the other hand, they quote
2 many outstanding judges who speak of the different
3 furniture of the mind of the lawyer from that
4 of the man concerned with the work-a-day life
5 along with the other workers of the world. Mr.
6 Lord Justice - he was a first class man, he
7 wrote a very important work on bills of lading
8 and shipping contracts - I have forgotten his
9 name but, in any event, he was a man of high
10 standing and I read a quotation from his address,
11 I think in Canada, where he said that you have
12 got to consider the structure of the legal mind
13 that has been trained and disciplined in the
14 accumulated customs of the past. Certainly, all
15 our laws in effect are customs and that is what
16 I implied by that term anyway, and he says
17 that the tendency is for these concepts to harden
18 and that they don't go along as quickly as they
19 might.

20 For that reason it seems to me
21 that it would be better to constitute a new
22 body, a body of highly trained, intelligent,
23 well-educated men, who keep on earth, you might
24 say, and do not concern themselves except in
25 general principles with the existing law
26 because in Australia they have done that to a
27 large extent. We may criticize that, and there
28 is no question of taking their apparatus and
29 introducing it here, but we may learn something
30 from it because they would not give up their

1 present system neither from the point of view of
2 the employer nor of the employee. They are
3 accustomed to it. As a matter of fact, you
4 must become accommodated to every new suit
5 of clothes, to every new piece of apparatus
6 in a society and, unless it is outrageously
7 incompatible with their old mores
8 then it is accepted, although granted it will
9 harden into an acceptability the/involves
10 loyalty to it.

11 MR. WEILER: What has been the
12 result, insofar as industrial peace is concerned
13 in Australia?

14 THE COMMISSIONER: Well, I
15 would say that it is comparatively satisfactory.

16 MR. POLLOCK: If you are measuring
17 on the basis of strike records there is not
18 that much difference between the number of
19 strikes, in fact there may be more strikes
20 occur if you count each one as one in
21 Australia, than occur in Canada, but their
22 duration is much, much curtailed. I think
23 it is very difficult to measure the effectiveness
24 of any system because of not having comparable
25 standards. As you say, if the success of a
26 system is the strike record, then you can say
27 that the system that they employ in Russia
28 is probably the most successful of all, they
29 don't have any strikes, or in South America,
30 or in Africa.

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1 MR. WEILER: I realize that
2 the aggregate of man-days lost is not the
3 true test.

4 THE COMMISSIONER: You can
5 have a strike in Australia lasting an hour
6 but you take the situation as a whole from its
7 social acceptability, it strikes me that so
8 far it has succeeded. They have been with it
9 now for 60 years and they would not change.
10 I was reading just yesterday where one labour
11 man declared that it would be ridiculous to
12 try to modify materially that system today in
13 Australia. Now, it may be that in the course
14 of 10, 20, 25 or 30 years, they may be modified
15 because they are getting a great deal of new
16 industry from North America, chiefly from
17 North America. It is hard to say what that
18 impact may result in, but I don't think it
19 would be fundamentally changed, that is, their
20 system.

21 MR. WEILER: Do these
22 administrative officers, for sake of a better
23 word, have they developed a jurisprudence
24 of their own?

25 THE COMMISSIONER: Yes, they
26 have.

27 MR. WEILER: Has it been in
28 basic principle very much opposed to the
29 accepted legal principles of contract and
30 behaviour?

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1 THE COMMISSIONER: No, I wouldn't
2 say that but their primary purpose is to deal
3 with potential difficulties at their birth,
4 not at their death.

5 MR. WEILER: And I agree whole-
6 heartedly with that. You try to put the fire
7 out as soon as it starts if it is at all
8 possible.

9 THE COMMISSIONER: There is a
10 certain intimate relation now between the
11 parties there that bodes well, I would say,
12 for its continuance. There is an easy access
13 to the Department of Labour by labour leaders
14 and even to the employers and there is that
15 rapport that plays a tremendous part.

16 MR. WEILER: Are they able
17 to attract competent men who are independent?

18 THE COMMISSIONER: I think the
19 very fact of administering the office of a
20 commissioner, say, has a tendency to objectivity
21 and you will find in many cases where an
22 employer will select a man who came up through
23 the labour ranks and contrarily, the labour
24 union, say, will select a man who came from
25 business.

26 MR. POLLOCK: If they had
27 a choice. They prefer the individuals. If
28 you ask them who do you think is one of the
29 better people, in many cases the employers
30 will choose from the union ranks and say "He is

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1 pretty square".

2 THE COMMISSIONER: That is
3 the result of what I would call a disciplined
4 office and it depends upon the original
5 capacity of the man, his power to divorce himself
6 in a sense, from his prejudices or his early
7 ideas, divorce himself from that when he is
8 considering objectively a dispute between
9 other people.

10 MR. WEILER: Just in closing,
11 I am going to leave with you a copy of the
12 Athens News of April the 14th, which indicates
13 that other countries have their problems too.
14 They do not have what I would consider is one
15 of the more advanced Labour Relations Acts
16 and certainly for procedures to try to get
17 people to sit down and rationally reach an
18 agreement, they do not have, apparently, so
19 far as I can determine, the certification
20 procedure and I believe they do not have
21 anything analogous to our conciliation procedure
22 but they have some form of an arbitration,
23 some final determining body in the government
24 which fixes rates. Well, of course, there is
25 a certain amount of chafing and in this case,
26 some of the building trades workers were unhappy ---

27 MR. POLLOCK: I might point out
28 in background, as of today they don't even
29 have the election process that we have here.

30 MR. WEILER: That has gone and

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1 that is a real tragedy because over there you
2 had the feeling that people were able to express
3 themselves very freely and they didn't hesitate.
4 I talked to officials in the hotel and the
5 bell boys and so on, to get their reactions.
6 One thing that was common to them in connection
7 with this matter was that they were not happy
8 with the idea of force to prevent people from
9 going to work. They said "They have got a
10 perfect right to quit and they can act collectively"
11 but they reacted against force and injuries
12 being inflicted on what the people called
13 strike breakers. They weren't strike breakers,
14 they were people who continued to work and just
15 for your own information, I thought that I
16 would leave that with you.

17 MR. POLLOCK: Well, just
18 turning for the moment to the suggestion that
19 you make on page 24 with relation to the
20 administrative body and the 6th suggestion
21 relating to changing the legislative background
22 in which the judges operate, you raise the
23 objection in number 5 that the administrative
24 body of the Provincial Government couldn't
25 deal with the problems of federal industry.
26 I think probably the same objection applies to
27 number 6 in that the legislature couldn't
28 legislate with relation to those.

29 MR. WEILER: When I spoke of
of the
30 legislatures I should have really spoken/legislature

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1 and parliament because they are both going to
2 have to lay down rules. Maybe they should
3 be uniform as, for example, there is in this
4 highway transport set-up. In that situation the
5 federal parliament has, by statute, delegated
6 the powers to the Ontario Board but the
7 principles are uniform, there are no different
8 principles with respect to federal licencing
9 than there are with respect to provincial.

10 THE COMMISSIONER: You mentioned
11 a good example of the incapability of the
12 highest legal and judicial body to appreciate
13 the necessities of administrative bodies
14 because, you see, that legislation followed
15 immediately upon the decision of the judicial
16 committee that a bus line from Boston to
17 Sydney, although organized and carried on
18 for several years as simply a through line
19 with through tickets and one thing and another,
20 could extend that to the control of their
21 routes in the city, that is, there was no
22 limit to the expansion of their services
23 local as well as through, and international,
24 as they pleased. The Dominion Government
25 got rid of it just as quickly as possible
26 and I think there was a demonstration of
27 where a political aspect was completely
28 ignored and disregarded afterward. It was
29 ignored by the court and their decision was
30 disregarded immediately.

1 MR. WEILER: Well, perhaps if
2 does not work entirely satisfactorily but
3 maybe it is better than having two bodies
4 acting independently and adopting different
5 principles.

6 THE COMMISSIONER: Oh, no, I
7 think the courts are always there to keep
8 the subordinate body within the scope that
9 the legislature has defined. That is always
10 the case. You can't go beyond the jurisdiction.

11 MR. POLLOCK: Turning to the
12 part of your submission relating to picketing
13 and disputes which affect the public interest
14 and in which you talk about secondary pressures
15 on someone whom you describe as "innocent
16 third parties to a dispute whose interests
17 are harmfully affected because of an economic
18 conflict which they themselves are powerless
19 to settle", this is on page 9: I suppose
20 that in this area you would exclude from the
21 innocent people those parties who have an
22 economic relationship with the area that is
23 under primary dispute? The only shortcut
24 I can take is - let us talk about the situation
25 of Hersey in Woodstock. Assuming there was
26 a strike at the original plant of Deacon
27 Brothers, if the employees of Deacon Brothers
28 also went to Hersey, which was a customer of
29 Deacon Brothers and who was an agent for
30 Deacon Brothers in selling Deacon Brothers clothing,

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1 and they said "Would you please not order any
2 more clothes from Deacon Brothers during the
3 currency of our labour dispute?" and he said
4 "No, I am going to continue ordering and
5 continue selling", well then, insofar as the
6 United States practice is concerned, if the
7 pickets were to picket that premises of Hersey
8 and say to the customers of Hersey, "Don't buy
9 Deacon Brothers clothes that are sold at Hersey,
10 buy Warren K. Cook, or something like that",
11 that is permissible, that is primary action.
12 What is your view on that situation as opposed
13 to that area where you put economic pressure
14 against an individual because he has some
15 very tenuous relationship with the primary
16 dispute, such as the Heather Hill case in
17 Toronto?

18 MR. WEILER: Mr. Pollock, I
19 haven't thought my way through on that. I
20 just don't know, it has troubled me because
21 it strikes me that when you have a person
22 not acting as an agent, but acting as a
23 retailer and buying a quantity of goods in
24 good faith, I don't see why - and he has got
25 that in stock, I don't see why he should have
26 any interference in the normal distribution
27 of that through retail sales.

28 MR. POLLOCK: Suppose you
29 eliminate that objection and say "You can sell
30 what you have". Say he only has one suit left

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1 and he is reordering a bunch of suits and they
2 say "You sell your one suit and as soon as
3 you sell that, don't order any more" so that
4 you will avoid any of the actions that occurred
5 before this man had any awareness of an
6 industrial dispute.

7 MR. WEILER: I do not favour
8 any spreading out of the activities beyond
9 the immediate parties concerned because it
10 is their dispute initially and I think that
11 outsiders should not be hurt.

12 MR. POLLOCK: Well, just as
13 a corollary of that, outsiders shouldn't assist
14 one of the sides either. If it was not for
15 the economic outlet that Hersey provided to
16 Deacon Brothers, Deacon Brothers would not be
17 able to operate.

18 MR. WEILER: You know, with
19 advertising media that we have the fact that
20 Deacon Brothers are in dispute with a union
21 can be widely publicized and can be used in
22 direct advertising to induce the public
23 not to buy Deacon clothes.

24 MR. POLLOCK: Of course, that
25 point-of-purchase advertising is still one of
26 the most significant types of advertising used
27 today. They still have the sign in the window
28 that says "On sale such and such, come and buy
29 this here", as opposed to just the advertising
30 in the newspapers, so that all these pickets are

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1 a point-of-purchase advertising against the
2 purchase of this commodity.

3 MR. WEILER: As I say, I have
4 not made up my mind but on the general principle
5 I think I would have to view any extension
6 of the influence of one of the parties to
7 interfere with the operation of another, I
8 think that should be restricted.

9 MR. POLLOCK: Would it ease
10 the resolution of your problem any if this
11 Hersey was a wholly-owned subsidiary of Deacon
12 Brothers? If, for example we take Canadian
13 Tire Corporation stores and there was a
14 dispute with the manufacturing end of Canadian
15 Tire to make certain tires. I don't think
16 they make tires but assuming they do make tires
17 and the dispute is with them in the manufacture
18 of their tires, could you go and picket all of
19 their Canadian Tire stores and say "Don't buy
20 Canadian tires here, there is a dispute on"
21 if it was the same close entity or some close
22 relative?

23 MR. WEILER: Again, that is
24 a retail outlet for the manufacturer, it is
25 almost one. That is less objectionable.
26 I don't see any reason why the union should
27 not be able to publicize the fact that it has
28 a dispute with somebody and try and induce
29 the public, by lawful means, that is by inviting
30 the public through advertising or other ways not

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1 to hurt the union and assist the employer by
2 buying those products and the same way with
3 my professional services, sir. If the Trades
4 and Labour Council, because I happen to
5 represent management on a number of occasions,
6 should decide to tell the members, "Don't do
7 business with Weiler", I can't do anything
8 about it. I have no complaint. That is
9 their privilege.

10 MR. POLLOCK: It is their
11 folly, too?

12 MR. WEILER: I wouldn't say
13 that, but on the other hand, I think it would
14 be wrong for them to take steps to break any
15 retainer that I might have.

16 MR. POLLOCK: It is all a question
17 of degree, though, I suppose, economic
18 relationship.

19 MR. WEILER: I suppose inducing
20 a person not to support and to actively engage
21 in attempts to breach contracts.

22 MR. POLLOCK: On the question
23 raised on page 10, picketing after bargaining
24 and conciliation, you suggest that in relation
25 to a strike vote, the last offer of the employer
26 should be voted on by secret ballot of persons
27 in the bargaining unit. Two questions: First
28 of all, how do you determine what is the last
29 offer of the employer?

30 MR. WEILER: Well, the last in

1 time. I don't mean that it is an offer that
2 would not ultimately be revised if it were
3 rejected. I am not using it in that sense;
4 I am using it as last in time, the most recent
5 offer of the employer.

6 MR. POLLOCK: You have this
7 administrative problem if you have a unit of
8 employees larger than 20 or 30 or 50 that you
9 can't communicate with them at all times. The
10 employer makes an offer, you put it to a
11 strike vote and say "Reject it, we are going
12 out on strike" and then the employer says
13 "I will give you ten cents more an hour",
14 and then they have to put that to a vote
15 again and they have to have dozens of votes.

16 MR. WEILER: Well, why not?
17 Because theoretically, the members are
18 controlling their destiny. I don't like this
19 business of having a strike vote before you
20 are finished with conciliation services and
21 power delegated to the bargaining committee
22 and the employees never have any say thereafter
23 until they are embroiled in a strike.

24 MR. POLLOCK: Analogous to a
25 delegation that comes from the shareholders
26 of the company, I suppose, or the directorate
27 to a negotiating committee and says: "All
28 right, you can settle within this limit. Don't
29 go any higher". The strike vote authorization
30 given to the negotiating committee of the employees

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1 should say, I suppose, in some circumstances,
2 "We are going to try to get \$1.25. If we only
3 get \$1.15, do you want to strike?" and they
4 say "Yes, we want to strike unless we get \$1.25"
5 and then the areas are clearly defined. They
6 know if they get less than \$1.25 they are going
7 to strike, they may not strike if they get
8 \$1.23 but the area of authority is defined by
9 this pre-strike vote. Otherwise, there is
10 no certainty at all, you just keep going back
11 and forth.

one

12 MR. WEILER: It is /thing to vest
13 them with power to make an agreement, for the
14 union members to vest their committee with power
15 to make an agreement; It is another thing
16 for them to vest the bargaining committee with
17 power to refuse to make an agreement.

18 MR. POLLOCK: That is a
19 distinction I would like you to explore.

20 MR. WEILER: Well, you can
21 very frequently set forth specific directions,
22 an area in which a bargaining committee can
23 settle and the same applies to management as
24 well as to unions; in other words, a union
25 might theoretically say, "If you can get a
26 package that will add up to 36 cents in one
27 way, shape or form, whether it is in money
28 or benefits or otherwise, okay, take it". But
29 before the bargaining committee should be
30 able to stop a group of employees from working -

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1 and they can effectively stop them from working
2 by so-called calling a strike - then I think
3 they should go back to the membership and
4 honestly explain what - and repeat - what the
5 employer has given as reasons and say, "Now,
6 here is a new proposal. Will you tell us
7 yes, or no?". I think they should have that
8 power before their employment is interfered
9 with and before they are exposed to suffering,
10 damage and loss.

11 MR. POLLOCK: The only problem
12 is it seems that this position ----

13 MR. WEILER: Sorry, sir, look
14 in litigation, we have got to go back to our
15 clients except when we have authority within
16 a certain area, we have got to go back to our
17 clients with revised offers to get specific
18 authority before we can make a settlement
19 and before we can say, in my view anyway, before
20 we can say "There is no settlement, we are
21 going to go on with the trial".

22 MR. POLLOCK: Before you say
23 "I am going to accept on that basis", it must
24 be in a definite area.

25 MR. WEILER: My view is that
26 before I reject an offer I think I have an
27 obligation to convey it to my client and
28 get specific instructions before I precipitate
29 him into a full fledged trial or even have
30 the case go to a jury in the course of a trial.

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1 MR. POLLOCK: The same obligation
2 is on you to put the offer before you accept
3 it on behalf of your client too.

4 MR. WEILER: Many times I
5 have got authority, as you know you get authority
6 within a certain area.

7 MR. POLLOCK: As long as you
8 are in that area, but if you are not within
9 that area, then you have to go back and ask
10 the same thing.

11 MR. WEILER: There is no
12 question about that, but it is when an offer
13 is made, a counter-offer is made outside of
14 that area and I haven't power I think I should
15 not reject that offer out of hand and precipitate
16 the client into a trial without giving him
17 the opportunity to consider it.

18 MR. POLLOCK: You are presuming,
19 of course, that the bargaining committee is not
20 acting in the best interest by not accepting
21 an offer offhand. Probably in a large number
22 of cases the union negotiating committee is
23 acting in the best interests of the employees
24 of the union.

25 MR. WEILER: I think so,
26 generally speaking, but there are situations
27 where something has developed or there is a
28 particular advantage to the union as an
29 entity as contrasted with the employees.

30 MR. POLLOCK: The point you

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1 appear to be making, at least the employer's
2 point on this issue, you make it better than
3 most people do, I must say, is that the union
4 negotiating committee ought to be able to
5 accept an agreement but ought not to be able
6 to reject it.

7 MR. WEILER: Reject a reasonable
8 proposal.

9 MR. POLLOCK: Well, how does
10 that square with your concern earlier on in
11 your agreement with the so-called sweetheart
12 agreements where the union membership is not
13 consulted and usually these agreements operate
14 to the definite detriment of the employees
15 affected? If the union negotiating committee
16 can go and make any agreement with the
17 employer, then their interests are not protected
18 in those circumstances.

19 MR. WEILER: I don't like
20 sweetheart agreements. I feel that there should
21 be authority retained by the people who are
22 directly affected. I know there are problems
23 resulting from it but I think that, generally
24 speaking, competent union representatives
25 the same way as competent counsel, can get
26 pretty clear instructions well ahead of an
27 issue being joined.

28 MR. POLLOCK: The last point,
29 I think, relates to the picketing, starting
30 on the topic of mass picketing. You say there is

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1 no reason for mass picketing except intimidation
2 or threat of violence. Well, there is the
3 position that is advanced on the basis of the
4 popular support theory that if you have a
5 number of people out there it looks like there
6 are more people supporting this cause than if
7 you have two or three people and also you
8 avoid any possibility of people saying "You
9 see those three fellows there, the union
10 leaders, the general membership doesn't want
11 this strike, it is those union leaders who
12 are causing this thing; we are going to cross".
13 I appreciate it is difficult to subtract the
14 effect of numbers and the blocking of entrances
15 but if we assume there is no blocking of
16 entrance and we can assume that there are no
17 physical threats of violence or anything and
18 you just have more than three or four, you
19 have 20 people marching up and down around
20 there and every time a car comes up it opens
21 up to let it go through - merely to give the
22 mass support idea, is there any objection
23 to that?

24 MR. WEILER: They open up just
25 enough maybe to go through but the persons
26 who maybe are in the car or in the truck are
27 awfully close to the people on each side. Now
28 what is the purpose of them being so close in?
29 To exercise and influence through an implied
30 threat is my view.

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1 THE COMMISSIONER: That brings
2 us to another question. What would you say to
3 abolishing the picket line and the employment
4 of strike breakers?

5 MR. WEILER: To abolish the
6 picket line?

7 THE COMMISSIONER: And forbid
8 the employment of strike breakers, confining
9 the struggle to the two parties involved.

10 MR. WEILER: My view is, sir,
11 that the picket line should not be abolished.
12 I think that a picket line which is designed
13 to let the news media focus their attention
14 on the problem is good.

15 THE COMMISSIONER: But isn't
16 it a fact that it is the picket line at which
17 the disturbance to the peace of the community
18 arises? Isn't that where the violence occurs?
19 Isn't it where the substance of objection to
20 these labour disputes originates?

21 MR. WEILER: Our experience
22 up here, sir, in that respect, has been
23 relatively good.

24 THE COMMISSIONER: But why,
25 because relatively speaking you have large
26 industries and a picket line is not necessary
27 because the plant is closed.

28 MR. WEILER: We have a lot
29 of small industries and there have been a lot
30 of picket lines in the last 20 years since I have

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1 been around here doing some of this labour
2 work.

11 THE COMMISSIONER: You have
12 had a number of them. Take one, one that
13 is significant. The strike took place. Was
14 it effective immediately in closing the plant?
15 That is, before there was any opportunity to
16 employ outside labour.

17 MR. WEILER: I will use an
18 illustration of a garage strike that we had
19 here.

20 THE COMMISSIONER: That is
21 pretty small, how many employees?

22 MR. WEILER: Well, there were,
23 in some plants, 50 employees and all the
24 garages bargained together and all of them
25 were struck together.

26 THE COMMISSIONER: Take an
27 industry that employs, say, 300 men. Have
28 you had anything of that sort?

29 MR. WEILER: I don't think we
30 have had a lawful strike. The railway strike

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1 last fall, which turned into an unlawful
2 situation.

3 THE COMMISSIONER: But that
4 closed the railway down?

5 MR. WEILER: That is right. I
6 don't know that we have had any, I can't think
7 off-hand of any lawful strikes involving that
8 large a number of people, but there have been
9 quite a number of strikes. I am talking about
10 that number of people at an individual plant.
11 In the garage situation there were more than
12 that number of people affected.

13 THE COMMISSIONER: Was there
14 a strike of all the garages?

15 MR. WEILER: All of the garages
16 in the two cities.

17 THE COMMISSIONER: What
18 happened?

19 MR. WEILER: The service
20 end of the garages were largely curtailed.
21 Some of the supervisory staff did some emergency
22 work, some gas was sold and some car sales
23 went on but the shops, generally speaking,
24 were closed down.

25 THE COMMISSIONER: How long
26 did the strike continue?

27 MR. WEILER: The most recent
28 one only lasted a few days.

29 THE COMMISSIONER: In the
30 meantime, were you in a position to engage

1 outside help? Was there help available? Take
2 in the shops where you must have certain skills.

3 MR. WEILER: The work was
4 crowded in many cases into some service station
5 set-ups with one or two mechanics who were
6 not under collective agreements, owner-operated
7 affairs.

8 THE COMMISSIONER: Would you
9 say that in substance the work was more or
10 less brought to a cessation?

11 MR. WEILER: I think the work
12 substantially came to an end except for emergency
13 work.

14 THE COMMISSIONER: And the
15 employers could not then continue too long
16 to lose money at that rate.

17 MR. WEILER: That is right.

18 THE COMMISSIONER: And to
19 what extent did the picket line contribute
20 to that?

21 MR. WEILER: Well, it contributed
22 to it to this extent. Number one, it had the
23 effect of occupying the employees who were in
24 the bargaining unit.

25 THE COMMISSIONER: Occupying
26 them in what way?

27 MR. WEILER: They would be
28 rotating on the picket line. There would be
29 maybe six pickets in a shop with 25 employees.

30 THE COMMISSIONER: I suppose they

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1 could have been at home or in the union hall
2 just as easily?

3 MR. WEILER: That is true and
4 then, in addition, I think it had the effect
5 of inducing many people not to go in because
6 of the matter of public relations. You take
7 a lot of business people, and maybe professional
8 people, would maybe be reticent about going in.

9 THE COMMISSIONER: But if they
10 didn't, they might not get gasoline but they
11 did get gasoline, didn't they?

12 MR. WEILER: Well, I say I
13 think the sales of gasoline were down substantially
14 but they weren't shut down completely.

15 THE COMMISSIONER: Were the
16 private automobiles shut down?

17 MR. WEILER: Of the general
18 public, no.

19 THE COMMISSIONER: Why, if there
20 was a strike on?

21 MR. WEILER: Because there were
22 sufficient other places offering similar services
23 both through gas and oil and through mechanical
24 services.

25 THE COMMISSIONER: So it was
26 just transferred from the whole group to one
27 section?

28 MR. WEILER: That is right, but
29 my point is that it didn't shut down completely
30 the garages that were affected but it definitely

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1 inflicted an economic harm on them and the
2 picketing was carried on peaceably and really,
3 from my point of view, there was no objection
4 to that. I think that was a proper way of
5 focussing the attention of the public on the
6 problem.

7 THE COMMISSIONER: You don't
8 think, then, that engaging new help is feasible
9 in the ordinary run of a strike?

10 MR. WEILER: In many cases it
11 is not, but there are situations where employees
12 do not want to go on strike.

13 THE COMMISSIONER: I am not
14 talking about those men, I am talking about
15 outside men. You know, you are familiar
16 with the difference between a scab, say, and
17 a strike breaker. A scab is a member of a
18 union on strike and he goes back but the
19 strike breaker comes in from the outside.

20 MR. POLLOCK: He has never been
21 an employee.

22 MR. WEILER: We don't, in this
23 area, have too many situations in anything
24 other than small plants involving maybe less
25 than 15 employees. In those situations men
26 have found the jobs attractive and have gone
27 in and filled the jobs.

28 THE COMMISSIONER: Outsiders?

29 MR. WEILER: Outsiders.

30 THE COMMISSIONER: Were they

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1 brought in permanently or temporarily?

2 MR. WEILER: In one instance
3 I have in mind, the men remained on the job
4 because the strike failed.

5 THE COMMISSIONER: Do you
6 think that that was a desirable end there
7 because of the small number and they could
8 be replaced?

9 MR. WEILER: Well, it pointed
10 up this: That in my opinion, the union was
11 unrealistic.

12 THE COMMISSIONER: In what way?

13 MR. WEILER: In its demands
14 and precipitated its men into a strike situation
15 where it was not justified and the jobs were
16 attractive enough to other people.

17 MR. POLLOCK: At the old rate?

18 MR. WEILER: At the old rates
19 or the improved rates.

20 THE COMMISSIONER: What do you
21 mean by that?

22 MR. WEILER: In the course of
23 negotiations there were improved rates offered
24 and those were attractive enough to bring
25 other people to work.

26 THE COMMISSIONER: Surely the
27 union men knew that when they went on strike.
28 Couldn't they have anticipated it?

29 MR. WEILER: They could have
30 anticipated it but they were, I think, misled.

1 MR. POLLOCK: Well, they misgauged
2 their strength, that is all.

3 MR. WEILER: That is right.

4 THE COMMISSIONER: They surely
5 must be familiar with the immediate surroundings
6 and as to whether or not they could be replaced
7 by outside people. Surely they would recognize
8 that.

9 MR. WEILER: That is not so
10 easy where you have 100 thousand people and
11 you need 8 or 10 employees.

12 THE COMMISSIONER: You are
13 speaking about the cities here?

14 MR. WEILER: Yes. There has
15 been quite a competition for jobs.

16 THE COMMISSIONER: Take a
17 larger case where you have 300 or 400 people
18 working and there is some degree of skill,
19 that is the first thing. Do you think they
20 can be replaced?

21 MR. WEILER: No, there is not
22 a supply of labour in this part of the province
23 which will provide a working force.

24 THE COMMISSIONER: Then the
25 strike achieves its object, it closes the plant
26 in effect.

27 MR. WEILER: Quite effectively.

28 THE COMMISSIONER: So there is
29 no need of a picket line.

30 MR. WEILER: No need for the

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1 purposes of ceasing operations.

2 THE COMMISSIONER: Achieving
3 the object of closing the plant, that is the
4 most they can have as the object, isn't it?

5 MR. WEILER: Sir, I feel that
6 the presence of a picket line with the
7 publicity that flows from it - we pick up our
8 newspapers because on the front page every
9 time there is a strike there is a story about it.
10 I don't know whether the story is written by
11 the union or whether it is written by the employers
12 but the fact of the matter is that the people
13 follow the course of the strike on the front
14 page of the paper and on the television.

15 THE COMMISSIONER: It is blown
16 up to a great extent, isn't it? It becomes
17 a whole community affair.

18 MR. WEILER: That is right.

19 THE COMMISSIONER: Is that a
20 desirable thing?

21 MR. WEILER: Yes, I think it
22 is desirable. I think it is desirable for
23 the general public to know. I will tell you
24 there are situations sometimes where persons
25 are underpaid and it helps to ----

26 THE COMMISSIONER: We are
27 assuming that the strike has succeeded in closing
28 the plant.

29 MR. WEILER: That is right.

30 Now, the plant remains closed and there are no

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1 replacements offered because the rates are not
2 attractive enough to bring other people in.

3 THE COMMISSIONER: Not only that
4 but the union is consolidated, it holds together.
5 None of those men will go back, the work is
6 stopped. Why interfere with that?

7 MR. WEILER: I don't think that
8 picketing interferes with it; I think it merely
9 publicizes it.

10 THE COMMISSIONER: Well, if it
11 doesn't interfere and it is only for the publicity
12 of it, why go to the trouble of stirring up
13 people unnecessarily, because hatreds are generated
14 in these matters which may divide families?

15 MR. WEILER: It works both ways,
16 sir. You take sometimes, for example, in a
17 municipal field where a union providing a
18 relatively essential service but not particularly
19 skilled type of work is required, sometimes the
20 demands are pretty excessive. The union has
21 a picket line and concurrently with that publicity
22 that comes about through the picket line, the
23 employer has, on occasion, publicized, not by
24 name, but by number, the annual earnings of
25 these people and it has had quite a salutary
26 effect in one situation.

27 THE COMMISSIONER: They didn't
28 do that on the picket line; they did it in the
29 newspapers?

30 MR. WEILER: That is true.

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1 THE COMMISSIONER: Well, that
2 is the place for it because it will reach
3 10, 20, 30 times the people that an individual
4 location will.

5 MR. WEILER: It is assumed,
6 though, that the workers and the union do not
7 have sufficient funds to carry on a costly
8 advertising campaign.

9 THE COMMISSIONER: That is
10 true ----

11 MR. WEILER: And picketing is
12 a way to get free advertising.

13 THE COMMISSIONER: Do you
14 think there is any ignorance of people who
15 were interested in the strike of the existence
16 of the strike?

17 MR. WEILER: Oh, I think there
18 is quite a segment of the people who are
19 interested in the strike ----

20 THE COMMISSIONER: Then they
21 know about it?

22 MR. WEILER: They know of the
23 existence.

24 THE COMMISSIONER: Because I
25 think it comes into the newspapers as a matter
26 of news, not as advertisement.

27 MR. WEILER: The news, though,
28 sir, becomes in my opinion, free advertising
29 to the union.

30 THE COMMISSIONER: I don't care

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1 what you call it, it communicates the fact
2 that there is a strike.

3 MR. WEILER: A photograph of
4 half a dozen pickets walking up and down a
5 block, sometimes the picket signs are
6 colourful, you know.

7 THE COMMISSIONER: What you
8 are arguing for is a colourful society.

9 MR. WEILER: I am not inclined
10 to take away, I don't subscribe to the view
11 that workers should be deprived of an
12 opportunity of adequately expressing themselves
13 and carrying their case to the public for
14 what it is worth.

15 THE COMMISSIONER: I don't either,
16 in this argument I am assuming that they have
17 all the means except the one that leads to
18 trouble and the more pickets you have, the
19 more effectiveness that your point is given,
20 the more danger of violence and the more
21 frequently the result is violence.

22 MR. WEILER: Picketing, sir,
23 per se, I don't think necessarily implies
24 violence but when you get too many, then it
25 is an abusive thing.

26 THE COMMISSIONER: The labour
27 men will tell you that what they want to do is
28 to make the demonstration at the critical
29 moment which is the first moment: everything
30 is whipped up to generate that fiery spirit,

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1 that incensed spirit at times, at that moment
2 they want to impress everybody - their own
3 men, other men, the public and the employers.

4 MR. WEILER: Well, that is a
5 sort of a type of salesmanship. I am hardly
6 in a position to sit in judgment against that
7 so long as they behave themselves.

8 THE COMMISSIONER: That is
9 the point. When you ask them why they don't,
10 one man says, and I don't think very honestly,
11 he says "It is human nature".

12 MR. WEILER: There are unions
13 with responsible people who are very careful
14 about controlling the behaviour of their
15 pickets.

16 THE COMMISSIONER: Well, they
17 seem to have a genius in keeping out of sight
18 because we haven't had many evidences of that.

19 MR. WEILER: We have had, in
20 the last two or three or four years a change
21 of attitude in some parts of the east. I am
22 unhappy about it and a lot of people I talk
23 to are because it just doesn't sit right.

24 THE COMMISSIONER: Perhaps I
25 misunderstood what you said. I understood
26 you to say that the unions were taking now
27 steps that eliminated all these questions.

28 MR. WEILER: Some unions
29 are very strict with the type of picketing
30 that is permitted.

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1 THE COMMISSIONER: Name some.

2 What unions have you in mind which have actually
3 maintained in large numbers without injunctions
4 peaceful picketing, in the sense of being
5 present and notifying the public?

6 MR. WEILER: You have put in
7 another factor there, sir. You put in the
8 factor of picketing in large numbers. I
9 don't agree with that. I subscribe to the
10 view that you could have picketing with a
11 token group of picketers who will effectively
12 convey to the general public the information
13 that there is a strike. Now, that is the type
14 of picketing that I think the union should
15 not be deprived from having.

16 THE COMMISSIONER: In the first
17 place you have that in a zone where industry
18 is proscribed. How many members of the public
19 have occasion, except the workers, to go into
20 that section or district every day where
21 this would be noticeable and effective in its
22 notice?

23 MR. WEILER: I say, sir, and
24 I have made this point in my brief, that the
25 presence of a token picket force is all that
26 is needed because the news media do the rest
27 for them, and you don't have to have a whole
28 great big group in that location.

29 THE COMMISSIONER: Then you
30 don't mean to say that the presence of the

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picket line itself is the advertising agency that you think desirable, in its own effect, but in its effect on collateral media.

MR. WEILER: That is correct, sir, it is not the media that disseminates the news of the strike: It merely provides the signs which other people read, not directly on the street, but through the other media, through television and newspapers and whenever there is a strike here, sir, I can tell you this, within 24 hours on the front page of the papers, there is a photograph of the picket line and that is how I think the information concerning the existence of a strike is conveyed to the general public peacefully.

THE COMMISSIONER: Well, this could be done by one man at that plant.

MR. WEILER: Maybe one is
adequate. All I am saying is that even one
man carrying a sign is a picketer.

THE COMMISSIONER: Then I think all you have to do is to send a notice to the media, they are all anxious for something to fill in the columns or the time of the reporters.

MR. WEILER: It is not as effective as a picture, in my opinion, sir.

Well, thank you for listening to me. I am sorry I have occupied your time all morning.

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THE COMMISSIONER: Thank you
for taking the trouble to try to give us
some answers.

I am sorry, Mr. Pollock has
a couple more questions.

MR. POLLOCK: There are a couple more questions that arise out of your brief and one of the questions relates to what we have been discussing, the limitation of action between the two parties, why is the employer intent in bringing in these outside people by either contracting out work or bringing in other employees? I think we have dealt with that and you think it is an economic question that the employer ought to be able to use the persuasiveness of what economic offers he is making to the union and he should be able to attract other people onto the same premises and that is the test of its reasonableness.

MR. WEILER: That is right.
I gave you an illustration of the situation
where they would go on strike but there was
a picket line set up and followed by a
secondary boycott.

THE COMMISSIONER: I was thinking
that a picket line was an incident of a strike.
If there is not strike, how can you have an
incident?

MR. WEILER: Well, a union calls

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1 a strike, they declare that there is a state
2 of war on.

3 THE COMMISSIONER: And nobody
4 goes out?

5 MR. WEILER: And the employees
6 don't go out. It was effectively done.
7 They hired the new boys - unemployed members
8 from the wine gang were principally engaged
9 to carry the signs when the employees wouldn't
10 go out on strike.

11 MR. POLLOCK: What is the wine
12 gang?

13 MR. WEILER: We have a fringe
14 here that is addicted to the catawba now and
15 then. They are down on the water front.

16 MR. POLLOCK: Inebriates?

17 MR. WEILER: Yes, they don't
18 hold steady jobs.

19 MR. POLLOCK: On page 16 you
20 talk about the difficulty encountered in
21 the construction of a shopping centre or a
22 dispute with a gas company, quite a lawful
23 dispute and the employees of the gas company
24 are on strike and they picket the premises
25 having the effect that other people don't
26 cross those lines. Is there any objection
27 on the part of a contractor, on the balance
28 of convenience, removing these pickets so
29 that other trades will cross, that the gas
30 part of the project not continue?

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1 MR. WEILER: In the illustration
2 which I gave, which is a concrete illustration,
3 the only relationship between the shopping
4 centre and the gas company at that stage, the
5 gas having been installed, was the supply of
6 gas through the pipe underground. Now, the
7 unions did not cross the picket line to go
8 to work. Some of the union leaders said
9 "Look, get the pickets off there and we will
10 go to work" and the same thing happens on
11 the water front. A ship comes in and there
12 was a union, you know, that at one stage was
13 going to keep anybody else off these Great
14 Lakes except ships that were manned by that
15 particular union.

16 MR. POLLOCK: I think both of
17 those unions were guilty of that at one time,
18 both C.M.U. and the S.I.U., depending on the
19 chronology of your history. The S.I.U. were
20 brought in, ostensibly to combat the C.M.U.
21 at one stage.

22 MR. WEILER: Oh, no, sir, your
23 history is a little off. The S.I.U. was
24 brought in to combat that original union,
25 that was not the C.M.U., the C.M.U. is a
26 more recent agreement set up by the C.L.C.
27 The other one was the Canadian Seamen's Union
28 that preceded the S.I.U., but the boast was
29 made by some members of the S.I.U., here, that
30 there were not going to be any boats out of the

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1 Great Lakes which didn't have collective
2 agreements with their union and then a token
3 picket line goes down and walks up and down
4 in front of the entrance to the elevator, a
5 thousand feet from the ship, but the stevedores,
6 the grain trimmers, don't go past the picket
7 line, they are members of another union so the
8 ship lies idle..

9 THE COMMISSIONER: Is that a
10 desirability in that situation?

11 MR. WEILER: It is highly
12 undesirable.

13 THE COMMISSIONER: Well, why
14 not remove the picket line?

15 MR. WEILER: That is why I
16 say the picket line was an unlawful picket
17 line, it had no contractual relations whatsoever,
18 they had no right to any collective action
19 against the ship owner or the elevator. And
20 the grain trimmers said to us "Get the pickets
21 off, we want to load that ship. Get the
22 pickets off and we will load the ship tonight".
23 We got it off.

24 MR. POLLOCK: Assuming there
25 is a dispute, a lawful dispute between the
26 seafarers and the shipping company and they
27 withdraw their services from this ship and
28 they picket the ship and the grain trimmers
29 want to go and work on the ship and they
30 don't want to cross the picket line, one of

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1 the main purposes of the seafarers pickets is
2 to prevent other seamen from going across
3 those pickets, isn't it? That is one of
4 their concerns. If they don't get other
5 seamen across, they aren't going to sail that
6 ship no matter whether it is loaded today or
7 next week.

8 MR. WEILER: That is right.

9 MR. POLLOCK: So that if the
10 employer really only wants to get the grain
11 trimmers in to load his ship, then he will
12 do that by eliminating the picket line, but
13 if his real purpose is to eliminate the
14 picket line and get other employees to replace
15 the striking employees, then that is where the
16 conflict comes in.

17 MR. WEILER: I am not at all
18 sure that an injunction could be obtained to
19 remove a picket line in that situation.

20 MR. POLLOCK: They do it all
21 the time in construction areas. You take a
22 site where the plasterers are on strike, lawfully
23 on strike, and the electrical sub-contractor,
24 his employees don't come to work. Well, he
25 goes and gets an injunction against those
26 employees because they are inducing breach of
27 contract between the electrical employees and
28 the electrical sub-contractor. He says "I have
29 nothing to do with these things, I am having
30 happy relations with my employees, please give

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me an injunction", and they give him an injunction and this prohibits these plasterers from picketing their project. Not only does it remove them completely from the project as far as these electrical people are concerned, it removes them from the projects so far as the plasterer, who had a legitimate strike on his hands, is concerned. He is now free to engage other plasterers. The unions complain, they say "All right if you are going to take away the picketing on this project, at least give us the guarantee that under this subterfuge you are not going to be able to employ other people to do the job that we were originally doing and are now in lawful strike in relation to".

MR. WEILER: I have never applied for an injunction in that situation.

MR. POLLOCK: Well, you would not quarrel with that principle that if that is the case, if you are going to balance the "innocent" contractor against the union that is lawfully on strike, then you have to give something to the union that is lawfully on strike against his employer.

MR. WEILER: That doesn't sound unreasonable to me.

MR. POLLOCK: So, if you remove the picket line in that case, it appears it would be all right with you that the person

1 with whom the strike is in effect, can't employ
2 alternate personnel.

3 THE COMMISSIONER: If you
4 destroy the picket line, he should not be
5 permitted to destroy the strike.

6 MR. WEILER: That seems reasonable
7 to me. I might have to eat those words
8 sometime.

9 MR. POLLOCK: We are still
10 going into the recipe, we have not baked the
11 cake yet.

12 Now, the last point is the
13 question about the injunction. In your
14 submission you say that as long as the order
15 is accurately made and narrowly drawn to
16 prohibit in the future only conduct which
17 is illegal in fact, then there is no effect
18 of the injunction. As long as it doesn't
19 shan't
say " You / : do any violence" or "shan't do
20 any of these other things - intimidation,
21 blocking of entrances," nobody is affected by
22 that, nobody's legitimate interest is
23 affected by that.

24 MR. WEILER: That is right.

25 MR. POLLOCK: The only point
26 I make is that most injunctions say "All right,
27 you are limited to two pickets per gate". Now
28 that continues on and on and on, whether five
29 pickets would be better at some time than two,
30 because five pickets doesn't amount to mass

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1 picketing, ten pickets isn't even mass picketing,
2 even 20 pickets. 500 or 1,000, we are in
3 a different degree.

4 MR. WEILER: The fact that
5 they spell out a number is a limit or a guide
6 and rather than leaving it in purely general
7 terms which will only maybe create another
8 problem.

9 MR. POLLOCK: It is not a
10 guide, though, it is a rule, there is
11 rigidity in it. It says "You can't have any
12 more than two pickets". I agree with you
13 that clearly they are enjoined against all
14 these violent acts and all these other things
15 and there is no quarrel with that and what
16 you say is perfectly correct with regard to
17 that, but this other effect of the limitation
18 of pickets may, in effect, reduce the effectiveness
19 at all of the picket line in all respects.

20 MR. WEILER: That only occurs
21 where there has, in fact, been violence.

22 MR. POLLOCK: All right,
23 so you get the injunction against the violence
24 and you still may have - why not allow them to
25 still have 10, 12, 15 pickets?

26 MR. WEILER: It seems to me that
27 there should not be any objection to some
28 reasonable standards being set out in the order.
29 Now, whether one, two, five or ten is the number
30 would depend on the particular case but I think

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that the judge has good enough sense that he can decide reasonably, what should be the number.

THE COMMISSIONER: That name occurs to me - Lord Justice Strutton, who was the man in this country who gave an address in which he emphasized the fact that the mental structure of a lawyer had been so affected by his education, by his training and by his associations with men of the same interest that he was scarcely in a position to judge of a situation which contained elements with which he was not acquainted.

MR. WEILER: I think there is an element of truth in that but I think in our country here that does not prevail to the same extent, sir, because in the north here, I will meet some of the fellows out on the golf course that I sit across the table from - operating engineers, business agents - and we will shake hands and we may pass the time away and twit ourselves about a particular problem we have.

THE COMMISSIONER: That is so, but the ordinary labour man does not accept that view. He says "We have evidence that they are acting in the same way here as they do in England" but I agree with you, conditions are not identical at all, they are not sufficiently similar.

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1 MR. WEILER: The economics
2 of the situation brings us down to doing, for
3 example, work that the ordinary workman does
4 and a lot of that work, under the pressure
5 of one's wife, and other things.

6 MR. POLLOCK: Thank you very
7 much, Mr. Weiler, you have been of considerable
8 assistance to us in the preparation of your
9 submission.

10 MR. WEILER: Thank you, sir.

11 MR. POLLOCK: It is now 15
12 minutes after 12:00. I call the Dryden
13 and District Labour Council.

14 I call the Fort William
15 Typographical Union, Local No. 417.

16 I call the Port Arthur-Fort
17 William and District Labour Council.

18 No answer, the Hearings are
19 adjourned until 1:30.

20 ---Adjournment until 1:30 p.m.
21
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1 ---On resuming at 1:30 p.m.

2 MR. POLLOCK: I call the
3 Dryden and District Labour Council. (No answer.)

4 I call the Fort William
5 Typographical Union, Local No. 417. (No answer.)

6 I call the Fort William-Port
7 Arthur and District Labour Council, Mr.

8 Norman Richard.

9 Mr. Richard, we have just
10 received your brief. Perhaps you might care
11 to read it and we can discuss some aspects
12 of it.

13 MR. RICHARD: Submission by
14 the Fort William-Port Arthur and District
15 Labour Council to Royal Commission Inquiry
16 into Labour Disputes, Commissioner Honourable
17 Ivan C. Rand, L.L.D.

18 Honourable Sir: Our Labour
19 Council, chartered by the Canadian Labour
20 Congress, has fifty affiliated unions,
21 representing some ten thousand members in the
22 cities of Fort William and Port Arthur and
23 the immediate surrounding area. We are
24 affiliated to the Ontario Federation of Labour.

25 The Fort William-Port Arthur
26 and District Labour Council has, if I may
27 put in, by a resolution at regular meeting,
28 approved the submission made to this Commission
29 by the Ontario Federation of Labour in
30 December, 1966.

Rather than re-stating many of the matters that the Federation has already presented, we shall confine ourselves to one item for your consideration. This is a matter concerning this area of Ontario.

In a number of labour disputes in Northwestern Ontario over the past few years, ex parte injunctions, restraining or removing pickets, have been issued by District Court Judges. Hearings on these injunctions are held and the final decision is made in Toronto.

In many cases, unions from these outlying portions of Ontario, have not appeared at the Supreme Court hearing in Toronto for a number of reasons. These include distance, high costs and even lack of public or private means of transportation, and communication. This default on the part of unions, we feel, could affect any final decision by the Supreme Court.

The Fort William-Port Arthur and District Labour Council wishes to thank this Commission for the opportunity of making this brief submission and hopes that due consideration will be given to the problem that we have raised.

All of which is respectfully submitted. Norman E. Richard, General Secretary.
Mr. Chairman, if there are any

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1 questions on that, I have known of a few cases,
2 especially in the smaller unions, where these
3 have affected it.

4 MR. POLLOCK: Could you tell
5 us some of those particular cases? First of
6 all, by way of general comment, have there
7 been any injunctions issued in this area on
8 notice in which the union has participated
9 and sought to challenge the evidence that
10 has been submitted and put in evidence of its
11 own?

12 MR. RICHARD: There have been
13 cases, but usually most of the unions in this
14 district are pretty much on their own and
15 do not get any extreme amount of service
16 from their national offices that would be
17 available in the immediate vicinity of Toronto
18 and places of that kind. The one I can recall
19 to mind was a small local about a year and a
20 half ago, who were on strike, injunctions
21 were issued locally, they were through the
22 Canadian Labour Congress who footed the bill,
23 made a presentation in Osgoode Hall, I believe,
24 and the terms of the injunction were lifted.
25 This concerned the gas strike which was on
26 here about a year ago last October.

27 MR. POLLOCK: What was the basis
28 of the injunction in issuing it?

29 MR. RICHARD: In this case,
30 as I recall, an installation was done in a major

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1 building, I think it was the Centennial Square
2 Project in Fort William.

3 MR. POLLOCK: Is that a shopping
4 centre?

5 MR. RICHARD: Yes. They had
6 made an installation prior to a long weekend
7 holiday. I believe it was Thanksgiving day,
8 there was still some work to be completed,
9 they went on strike the next day and others
10 went in and completed the job. This is
11 the story. The terms of it removed the
12 pickets but as I can recall, the order, the
13 final order on it, the pickets were removed
14 until such time as the company resumed work
15 on the project. Well, this was done and
16 shortly after the whole matter was resolved
17 and I can say that they reached a settlement
18 shortly after the decision in Osgoode Hall.

19 MR. POLLOCK: In other words,
20 so long as the company did not proceed with
21 the construction and the work on the project,
22 the injunction continued.

23 MR. RICHARD: Yes, the court
24 restrained the company from doing it but in
25 the process of the time between the issue of
26 the order in Toronto and the receipt of it here,
27 the company had gone in and done some work
28 so this put it wide open when the order came
29 through. There was rather an awful lot of
30 confusion, I can say, because this thing

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bounced back on them. This is one case where
an injunction actually bounced. It is one
of the few and rare occasions.

On the other matter of distance,
the smaller locals - we have a number of them,
in our own labour council we have 60 affiliates,
the largest one will run to about a thousand
members, but we have lots of them that are
15 and 20 member locals and as you can see
in this matter, it is really a tough project
for a small local of that nature to send
witnesses or anything to Toronto for a hearing
on this matter.

MR. POLLOCK: Would they be
able to send witnesses to appear at the
hearing in Port Arthur?

MR. RICHARD: A good portion
of them are here. Out of this area there
are 60 affiliated to us. I would say there
are about 70 local unions in this area, in
the immediate surroundings, that is not
going into the far west of Ontario, but
within 50 miles, I would say within a radius
of 25 miles of here.

MR. POLLOCK: If the original
application, which is made by the company
is to the court in Port Arthur, then the
union would be able to appear in Port Arthur?

MR. RICHARD: This is right.
There are three district judges here, I believe,

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1 who look after the area. There are two stationed
2 here, I believe, there is one in Kenora and
3 there is one in Ft. Francis. This puts a
4 judge which would be on a hearing within 160
5 miles, within, I would say, 150 to 200 miles,
6 there would be one available.

7 Another problem, as I mentioned
8 here on the transportation, you could throw
9 out Canadian Pacific practically. If you've
10 got 3 days or 4 days or 9 days, or whatever
11 it is trying to get a ticket on the Canadian
12 is like pulling teeth from a hen, I guess.
13 We have bounced into it and sometimes in peak
14 periods, T.C.A., which is the other outlet,
15 is rather packed and under extreme conditions
16 you still have Greyhound now, but it is not
17 a first class standard of transportation.

18 THE COMMISSIONER: What about
19 the C.N.R.?

20 MR. RICHARD: To go to Toronto
21 by the C.N.R., Your Honour, is very difficult.
22 You leave here the night before on Greyhound,
23 stop over at Longlac until the next morning
24 and then come through on the Supercontinental.
25 It is an outlandish way. Actually, the C.P.R.,
26 Canadian and T.C.A. are the only outlets to
27 Toronto and if either one of them is plugged,
28 it creates a problem.

29 MR. POLLOCK: There are
30 occasions when you can't get day coach accommodation

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on the C.P.R.?

MR. RICHARD: It is really rough, sometimes, and when an order is issued it has got to get there. If you need 3 or 4 witnesses to go down, perhaps one could make it but it is really rough this way.

MR. POLLOCK: Do you have any figures as to how many ex parte injunctions have been issued in the last, say, 10 years?

MR. RICHARD: Offhand, I would not want to fathom a guess, especially in the construction trades which I am not too familiar with but within the last year and a half, I would know of some half-dozen.

MR. POLLOCK: There are on record in the recent study conducted by Professor Carrothers on labour injunctions, from 1958 to 1966, a total of 10 injunctions issued in the district of Thunder Bay, so that based on what you have just said about knowing of half a dozen in the last year or so, there must have been considerable that are not reported in this study, or the other conclusion might be that your figures are incorrect.

MR. RICHARD: As I say, the two definite ones that I personally know about were the gas strike about a year and a half ago and last year was a brewery strike. I think in the gas strike there were 3 injunctions issued, if I recall properly.

1 MR. POLLOCK: Who was the
2 company?

3 MR. RICHARD: Twin City Gas.

4 MR. POLLOCK: And what year
5 was that?

6 MR. RICHARD: A year ago
7 last October, I believe.

8 MR. POLLOCK: That would be
9 1965?

10 MR. RICHARD: Yes.

11 THE COMMISSIONER: What was
12 the nature of the work of those men?

13 MR. RICHARD: Installing
14 gas and servicing.

15 THE COMMISSIONER: In the cities?

16 MR. RICHARD: In the cities
17 and the immediate area, the two cities.

18 THE COMMISSIONER: They have
19 a headquarters here, I suppose?

20 MR. RICHARD: And an office
21 in Fort William.

22 THE COMMISSIONER: How many
23 men would be involved?

24 MR. RICHARD: I think there
25 were about 15 at the time, a small local.

26 THE COMMISSIONER: And that
27 is a separate union?

28 MR. RICHARD: Yes.

29 THE COMMISSIONER: I suppose
30 those men require some skill for that work?

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1 MR. RICHARD: A variety of
2 skills, I would say, some of them very detailed,
3 others not so much.

4 THE COMMISSIONER: On a
5 situation of that type, are you bothered in
6 any way by strike breakers?

7 MR. RICHARD: In this case,
8 no, they were not. In this area there are
9 not too many strike breakers because this
10 area is proportionate to the rest of Canada
11 and it is very highly organized.

12 THE COMMISSIONER: Pretty well
13 organized.

14 MR. RICHARD: I would say well
15 over the national average.

16 THE COMMISSIONER: So really
17 that is not a present, pressing help that
18 you seek?

19 MR. RICHARD: Not in this area.

20 MR. POLLOCK: Was it the gas
21 company that got the injunction in that case
22 or was it the construction company?

23 MR. RICHARD: It could have
24 been the construction company, it was in the
25 area of that, I know.

26 MR. POLLOCK: You don't know
27 the name of the construction company?

28 MR. RICHARD: Would it be Bird?

29 THE COMMISSIONER: Is it a
30 private company that distributes the gas in this

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1 city?

2 MR. RICHARD: Well, it is one
3 of the big gas complexes of Northern and
4 Central. It is completely owned.

5 THE COMMISSIONER: It is not
6 done by the city?

7 MR. RICHARD: No, Twin City Gas,
8 which is a completely owned subsidiary of
9 Northern and Central.

10 THE COMMISSIONER: Don't they
11 have their own employees for the installation
12 of gas?

13 MR. RICHARD: Yes.

14 THE COMMISSIONER: Wouldn't this
15 strike be a strike against the gas company?

16 MR. RICHARD: Yes, it was, Twin
17 City Gas.

18 THE COMMISSIONER: What workers
19 were striking, the gas people?

20 MR. RICHARD: The gas company
21 people, and then they picketed the Centennial
22 Square Project where they had been working
23 immediately prior to the strike, doing an
24 installation.

25 MR. POLLOCK: Would you have
26 any idea again, on the records of your
27 organization, of the names on the injunctions
28 that have been granted in the past 5 or 10
29 years, or any method of obtaining that information?

30 MR. RICHARD: It could be possible,

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I believe, but it would be a protracted job right now in our case. As you might know, we have just moved our office about a month ago and we are in the process of catching up on a lot of stuff. We have some records but not too many of them.

MR. POLLOCK: Has there been in those hearings in the area in, say, Port Arthur, for example, where notice has been given to the employees or people of the union, against whom the order is sought, against the individuals, I assume - has there been in any of those circumstances, appearances made at the hearing by the unions involved or by employees or the individuals named?

MR. RICHARD: In one case here, where I mentioned lack of communication, this is what you are trying to get at, now I personally did not know it, but it was reported to us and there was quite a hurrah about it at the time that the injunction was issued against certain people who were not available, that we had understood had been away for about ten days back in the bush country and by the time they got back to get the order that was to be served on them, the hearing had taken place. I have heard of this. Now, I am not going to say it is absolute because I have not been able to put a check on it myself.

THE COMMISSIONER: I suppose you

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1 have your headquarters here in this city?

2 MR. RICHARD: Yes, the New

3 Labour Citadel.

4 THE COMMISSIONER: And in the
5 cities you have named, including these two,
6 you have county court judges?

7 MR. RICHARD: There are two
8 in Thunder Bay, here and a couple in the area.

9 Your Honour, this is Frank
10 Mazur, he is an executive officer of our
11 Labour Council.

12 MR. POLLOCK: In the gas company
13 strike again, it was a lawful strike, was it?
14 They had waited through the conciliation
15 procedure and all that?

16 MR. RICHARD: Yes.

17 MR. POLLOCK: And it was a
18 shopping centre that they shut down, is that
19 right?

20 MR. RICHARD: Yes. As I
21 pointed out and brought out in this, the thing
22 that got me was that once the full facts were
23 presented to the Supreme Court in Toronto,
24 there was quite an amendment in the order
25 itself. I understand quite a few of these
26 have gone by default. I guess you would
27 have to take the chance or get the records
28 of the court in Toronto in Osgoode Hall, perhaps,
29 to find these, but we know of a number that
30 have gone just because it was too late to hear

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about it or just inability to attend.

MR. POLLOCK: I have had some difficulty trying to locate the particular injunction about which you have been speaking. I wonder if you could provide me with some of the material when you get back to your office and sort it out.

MR. RICHARD: Would it be good enough if I could mail it to you?

MR. POLLOCK: Oh, yes, I mean by mail, not by hand.

MR. RICHARD: We have a good portion of it there, the original order that was issued here and the actual copy of the order from the Supreme Court.

MR. POLLOCK: That would be very helpful if we could get that information. It would also be very helpful if you could provide us with any other information. In some cases injunctions that are obtained ex parte that don't get to Toronto, so to speak, they are difficult to obtain information about and perhaps through a diligent search of your office, you might turn up some of these things and it might open a channel of communication so we can find out more information about those particular disputes.

MR. RICHARD: As I say, they are directly concerned, that I know of, two of them, and only one that I know of that has

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1 gone to Toronto. These could be brought - it
2 will take some time, I can't promise when
3 you will get them, but we will make an
4 attempt to get this for you.

5 MR. POLLOCK: Fine, thank you.

6 On the general functioning
7 of the Labour Council in Fort William and
8 Port Arthur, I take it, as most labour councils
9 operate, you are called upon at times to
10 support or give support by various methods,
11 either financially or by public attendance
12 at the site to bolster the numbers, I suppose,
13 in picketing. First of all, is that
14 assumption correct, that you do participate?

15 MR. RICHARD: We do in a
16 token manner but I will say that this area
17 is very well organized and we do not have
18 too many problems with strike breakers, shall
19 we call them. There have been a few times
20 when a token picket has been put out but
21 basically, picketing has been done by union
22 participants.

23 MR. POLLOCK: I noticed on
24 the way in from the airport yesterday that
25 there was a dispute that was going on and
26 we heard something about it yesterday morning,
27 between the painters union and some of the
28 contractors. I have not noticed around town
29 too many pickets. I guess that is the evidence
30 of the high degree of organization in this area.

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1 MR. RICHARD: And the high
2 level of employment at the present time in
3 the construction field.

4 MR. POLLOCK: I guess that is
5 a common factor in most places, even in
6 Toronto, I think. The skilled trades in
7 construction are pretty hard to find. So
8 that you aren't bothered at all - or at least
9 to any great extent - by strike breakers and
10 you really are probably blessed as far as
11 the trade union movement is concerned, in
12 that field.

13 MR. RICHARD: I put it this
14 way: Rather than anything imposed from the
15 top, the trade union movement grew out of
16 itself in this area. We built our own
17 trade union, we didn't have any brothers come
18 in and build it for us. We have been all
19 closely linked right from the bottom and I
20 think this has brushed off. My grandfather
21 here, was a trade unionist, my father was one
22 and three of my brothers are, two of them
23 active, but this is, shall we say, perhaps
24 one of the things in this area that a lot
25 of other parts of the country do not appreciate.

26 MR. POLLOCK: I noticed the
27 button, I think it is carpenters, isn't it?

28 MR. RICHARD: This one is C.L.C.

29 MR. POLLOCK: The largest union
30 around here, I take it, would be the carpenters

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1 union and its affiliates, is that correct?

2 MR. RICHARD: It would be pretty
3 close, because lumber and sawmill has been
4 with them and you have two other carpenter
5 locals but I think it would be a pretty close
6 match with the sulphite workers in this area.
7 You have got a number of mills in the immediate
8 area, four in the two cities and three not
9 too far away.

10 MR. POLLOCK: Well, we are
11 indeed obliged for the clarity and the brevity
12 of your submission today and perhaps if you
13 could provide us with that very necessary
14 information, it would be appreciated.

15 MR. RICHARD: I will do my
16 utmost to get this for you and just bring
17 to the point that we brought out that a
18 lot of this has happened by default, we can
19 bring you one instance where we know that
20 the order was amended anyway.

21 MR. POLLOCK: Mr. Mazur, have
22 to
23 you got anything / add to the eloquence of
your Secretary-Treasurer?

24 MR. MAZUR: No, I think the
25 Secretary-Treasurer pretty well covered the
26 facts pretty thoroughly.

27 MR. POLLOCK: Well, if in the
28 near future you can think of any other
29 suggestions or amplification of your submission,
30 we would be only too pleased to receive them by

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1 mail, if that is easier to get out of here than
2 it is to get a body out.

3 MR. RICHARD: This is one
4 of our problems, as I say. We have known
5 of some who have had problems in this,
6 especially dealing with the Department of
7 Labour at times and it has been this way.
8 This is why we just wanted to bring it to
9 your attention. If I can dig this out we
10 will see that you get it.

11 MR. POLLOCK: Much obliged,
12 thank you very much.

13 I call the Dryden and District
14 Labour Council, L.D. Stuart, President. (No
15 answer.)

16 I call the Fort William
17 Typographical Union, Local No. 417. (No answer.)

18 The Hearings of this Commission
19 in Port Arthur are adjourned sine die.

20 ---Adjournment

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BINDING SECT. OCT 20 1967

